

THE DEPARTMENT OF THE INTERIOR'S DENIAL
OF THE WISCONSIN CHIPPEWA'S CASINO
APPLICATIONS
VOLUME 3

DEPOSITIONS
BEFORE THE
COMMITTEE ON
GOVERNMENT REFORM
AND OVERSIGHT
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTH CONGRESS
SECOND SESSION

JANUARY 21, 22, 28, AND 29, 1998

Serial No. 105-92

Printed for the use of the Committee on Government Reform and Oversight



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THE DEPARTMENT OF THE INTERIOR'S DENIAL OF THE WISCONSIN CHIPPEWA'S CASINO APPLICATIONS

[The depositions of Hilda Manuel, Kevin Meisner, Patrick Emmitt O'Donnell, Michael T. Schmidt, Thomas Jay Schneider, Heather Sibbison, George Tallchief Skibine, and Jennifer O'Connor follow:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: HILDA MANUEL

TUESDAY, JANUARY 6, 1998

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 9:40 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: James C. Wilson, Senior Investigative Counsel; Bob Dold, Majority Counsel; David Sadkin, Minority Counsel; and Ken Ballen, Minority Counsel.

For MS. MANUEL:

TIM ELLIOTT, ESQ.
Deputy Acting Associate Solicitor-General Law
Department of Defense,
Office of the Solicitor
1849 C Street, N.W.
Washington, D.C. 20240

Mr. WILSON. Good morning. On behalf of the Members of the Committee on Government Reform and Oversight, I thank you very much for appearing here today. This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and notary public. And I will now request that she place you under oath.

THEREUPON, HILDA MANUEL, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. WILSON. I would like to note for the record those who are present at the beginning of this deposition. My name is James Wilson. I am the designated Majority counsel. I'm accompanied today by Bob Dold.

Mr. SADKIN. I'm David Sadkin representing the Minority. And I will be joined by Ken Ballen in a few minutes.

Mr. WILSON. Ms. Manuel is accompanied today by Mr. Timothy Elliott.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here has the same force and effect as if you were testifying before the committee or in a courtroom.

If I ask you about conversations you have had in the past and you are unable to recall the exact words used in such conversations, you may state that you're unable to recall those exact words, and then you may give me the gist or substance of any such conversation to the best of your recollection. If you recall only part of

a conversation or only part of an event, please give me your best recollection of those events or conversations.

If I ask whether you have any information about a particular subject and you have heard other persons conversing with each other regarding that subject or seen correspondence or documentation about that subject, please tell me that you do have such information and indicate the source from which you derived such knowledge.

Majority and Minority committee counsel will ask you questions regarding the subject matter of this investigation. Minority counsel will ask you questions after I have finished. After Minority counsel has completed questioning you, a new round of questioning may begin. Members of Congress who wish to ask questions in the event that they attend, of course, will be afforded an immediate opportunity to ask their questions. When they are finished, committee counsel will resume questioning.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the deposition will be stated for the record. If you are instructed or refuse to answer a question, Majority and Minority counsel will confer to determine whether the refusal is proper. If Majority and Minority counsel agree that the question is proper, the witness will be asked to answer the question. If an objection is not withdrawn, the Chairman or a Member designated by the Chairman may decide whether the objection is proper.

This deposition is considered as taken in executive session of the committee, which means it may not be made public without the consent of the committee pursuant to clause 2(k)(7) and House Rule XI. No later than 5 days after your testimony is transcribed, and you will be notified that your transcript is available, you may submit suggested changes to the Chairman. The transcript will be available for your review at the committee office.

Committee staff may make any typographical or technical changes requested by you. Any substantive changes or modifications submitted by you must be accompanied by a letter requesting the changes and a statement for your reasons for each proposed change. And a letter requesting substantive changes must be signed by you. Any substantive changes will be included as an appendix to the transcript, conditioned upon your signing of the transcript.

And just to tell you what has been happening, transcripts are generally available fairly quickly after the deposition is completed, within a day or two, and somebody will call Mr. Elliott as soon as possible, inform him that the transcript is ready, and then we'll work to make it as convenient of as possible to review that transcript with you. Do you understand everything we've gone over so far?

The WITNESS. Yes, I do.

Mr. WILSON. If you don't understand a question, please say so, and I will repeat it or rephrase it so that you do understand the question. Do you understand that you should tell me if you don't understand my question?

The WITNESS. Yes, I do.

Mr. WILSON. The reporter will be taking down everything we say and will make a written record of the deposition. Please give verbal, audible answers in order to assist the House reporter.

Your testimony is being taken under oath as if we were in court. And if you answer a question, it will be assumed that you understood the question and the answer was intended to be responsive to it. Do you understand that?

The WITNESS. Yes, I do.

Mr. WILSON. It's my understanding that you are here voluntarily, and we thank you for that. Do you have any questions about this deposition before we begin the substantive portion of the proceeding?

The WITNESS. No, I don't.

Mr. WILSON. Mr. Elliott, if you would like to make a statement or observation at this time.

Mr. ELLIOTT. As I've said at two previous depositions, those of Mr. Hartman and Mr. Jaeger, we're very concerned about the effect of these depositions on the ongoing litigation involving the very same issue. We are concerned that these depositions and the process being undergone will adversely affect the United States' position in that litigation.

Ms. Manuel was indeed in the Department of the Interior in the Bureau of Indian Affairs at the time of the application and the decision thereon. She knows the deposition-making process of the Department of Interior and she can talk about that. However, I have instructed her that she is not to talk about the litigation or any issues in the litigation so far as she is aware of them, even though she's not been actively involved in the litigation itself.

Mr. WILSON. Thank you.

Mr. SADKIN. I have a few brief comments before we begin. It is the understanding of the Minority that this deposition relates to the Interior Department's denial of an application by three Indian tribes to place off-reservation land in the trust for the development of a casino in Hudson, Wisconsin.

After the Interior Department rejected the request, the applicant tribes alleged that the opponents of the casino, other Indian tribes, improperly influenced the decision through contacts with the Democratic Party and administration officials. These allegations are the subject of a well-publicized lawsuit pending in the U.S. District Court for the Western District of Wisconsin, which Mr. Elliott referred to.

As the Majority is aware, the Senate Governmental Affairs Committee has already thoroughly investigated this matter. It has interviewed and deposed dozens of witnesses and taken public testimony from those people central to any allegations of impropriety. For example, the Senate held a public hearing at which Secretary of Interior Bruce Babbitt, former DNC Chairman, Donald Fowler, lobbyist Paul Eckstein, and former Deputy Chief of Staff, Harold Ickes, all testified.

The Attorney General is also looking into this issue. And I understand the House Resources Committee has commenced its own investigation.

I want to take this opportunity to lodge a continuing objection of the Minority to this deposition and every deposition relating to the Hudson casino matter. While this committee has the power to pursue this inquiry, it is an imprudent use of the power to investigate and reinvestigate matters that have already been thoroughly examined.

On behalf of the Minority, I would like to thank Ms. Manuel for appearing today voluntarily. She was not called by the Senate to give a deposition or hearing testimony, and I suspect that is because you have little to add to the already exhaustive public record. Thank you.

EXAMINATION BY MR. WILSON:

Question. Ms. Manuel, would you please state and spell your name for the record?

Answer. My name is Hilda, H-I-L-D-A. My middle initial is A, last name Manuel, M-A-N-U-E-L.

Question. Did you attend college?

Answer. Yes.

Question. Where did you attend college?

Answer. University of California, Berkeley.

Question. Could you please provide a brief employment history after college until the present?

Answer. Well, after college, I went to law school, graduated from University of New Mexico in 1976. And in 19—in—I graduated in December of '76. And then in 19—in July, I mean in January of 1977, I went back to Arizona to work with my own tribe as a juvenile judge where I remained for the next several years until 1990.

Question. And after 1990?

Answer. In 1990—January of 1990, I came to Washington, D.C.

Question. And where did you work when you came to Washington, D.C.?

Answer. I was hired as a judicial services officer for the Bureau of Indian Affairs.

Question. And have you had different positions at the Bureau of Indian Affairs?

Answer. Yes. I remained in my judicial services officer for about a year. And in '91, May of '91, I was promoted to Division Chief of Tribal Government Services. And in November of '91, I was assigned a task by the Secretary of the Interior, then Secretary Lujan, along with several other individuals in the Department to look at the problems in Indian gaming. And from that point on, from November '91, through May '94, I worked exclusively in Indian gaming. I set up the first office for the Department.

Question. And what were your positions during this time up to the present?

Mr. ELLIOTT. During this time—

Mr. WILSON. Well, I'm trying to get a sense—

Mr. ELLIOTT [continuing]. From '94?

Mr. WILSON [continuing]. Of the title of the job.

Mr. ELLIOTT. She's given you to '94.

Mr. WILSON. Of the titles to the present.

The WITNESS. From judicial services officer, tribal government services officer, and gaming management specialist.

EXAMINATION BY MR. WILSON:

Question. And is your title still gaming management specialist?

Answer. No. I'm currently the Deputy Commissioner of Indian Affairs.

Question. Did you have a title in between gaming management specialist and deputy commissioner?

Answer. No. I was moved to the front office in May of '94 in an acting capacity as deputy commissioner and then became permanent in October of '94.

Question. From May of 1994 until the end of 199—or until July of 1995, what were your responsibilities?

Answer. To—as deputy commissioner, my responsibility is to provide supervision and direction to the Bureau of Indian Affairs nationwide.

Question. And is that related to all Indian Affairs matters or just gaming issues?

Answer. No. Everything.

Question. In 1994 and 1995, where were you physically located in terms of your employment? Where was your office?

Answer. In the central office here in Washington.

Question. And is that at the main Department of the Interior—

Answer. Yes.

Question [continuing]. Building?

To whom did you report in 1994 and 1995?

Answer. To the Assistant Secretary of Indian Affairs.

Question. And that person, what is the name of that person?

Answer. The Assistant Secretary was Ada Deer.

Question. Have you discussed this deposition with anybody?

Answer. Just with Mr. Elliott, who informed me of the procedures of how you proceed with the deposition and what I might expect.

Question. Have you provided documents regarding the Hudson Dog Track matter, and just for want of a better shorthand term, I'll refer to fee-to-trust application process and the denial of that application is the Hudson Dog Track matter. Have you given documents regarding the Hudson Dog Track matter to the Department of Justice?

Answer. Not that I'm aware of.

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. No.

Question. Apart from this deposition and arranging the logistics of this deposition, have you spoken with any congressional personnel about the Hudson Dog Track matter?

Answer. No.

Question. And just to be clear, I'm including both the House of Representatives and the Senate—

Answer. I understand.

Question [continuing]. Investigators.

Do you have any documents that relate to the Hudson Dog Track matter in your personal possession?

Answer. No, I don't.

Question. When did you first hear about the application to take land into trust and the Hudson Dog Track facility?

Answer. In—to the best of my knowledge, some time in—during the summer of '94 when I was still in my role as the director of gaming, but acting as deputy commissioner.

Question. And do you remember how you heard about the Hudson Dog Track matter?

Answer. From the area director.

Question. Do you recall whether the first time you heard about it was through verbal communications or was it through materials that you received written?

Answer. It was, I believe, verbal communication.

Question. And with whom did you communicate at that time?

Answer. The area director.

Question. And who is that individual?

Answer. At that time, it was Denise Homer.

Question. I just want to ask a sort of a very general question. And I have a number of documents that I'll be giving you, and we'll discuss specifics. But on July 14, 1995, the application to take land into trust at Hudson, Wisconsin, was rejected. Why was it rejected?

Answer. The—as I recall, the letter which I believe I also surnamed, the reasons that we provided to the three applicant tribes were primarily based in the fact that the Secretary had decided to exercise his discretion not to take the land into trust because there were a number of problems that we felt could not be overcome by further documentation or justification. There was strong community opposition to the application. There was going to be detriment both to the local community and to

the local Indian tribe, the St. Croix Chippewa who had a casino, I believe, about 40 or 50 miles from the location of the proposed Hudson casino. And there were a number of environmental issues, as I recall, that had not been adequately addressed.

Question. At the beginning of your answer, you referred to a process that I don't understand. And perhaps you can help me out with that. You mentioned that you surmised the July 14 letter. What does that mean?

Answer. What that means in the chain of command system that we have within the Bureau of Indian Affairs, the Gaming Director, who at that time was Mr. Skibine, reports to me. I'm his supervisor. He can send a memo to the Assistant Secretary, but it has to go through me. I have to sign it. We call that surnaming, because we, not only do I sign it, but I also put my initials on the yellow copy of the transmittal memo. And what that memo is is the recommendation to the Assistant Secretary of what the staff findings were with regard to the application.

Question. And just trying to get a sense of what these transmittal memoranda look like, are they full page memoranda?

Answer. Yeah, they're on 8 by 11, and it will be to Assistant Secretary through Deputy Commissioner from Staff Director, then subject. It will have a subject title. And that's very, I mean that's the way we do all memorandum that have to go to the Assistant Secretary. They either come from me or through me.

Question. And are these typewritten memoranda?

Answer. Yes. Well, they're printed off the computer.

Question. Are they transmitted with a copy of the memoranda when it's passed on to the next person?

Answer. Yeah. Everything that's in the—

Mr. ELLIOTT. Wait. What she's talking about is these are not separate documents, the surname copy. The surname copy is a copy of the very memorandum that is being sent forward usually with a little block in the right-hand corner somewhere where somebody signs off. There's also the original of it would be the very same thing as the surname copy except with surname signatures if they get on it with dates on them. And there may be, in many cases, and what Hilda is describing is from somebody to somebody two or more levels up has to go through, in most cases the next line supervisor.

The WITNESS. Senior manager.

Mr. ELLIOTT. And that would be both on the line. It's not a separate memorandum that says that.

The WITNESS. Yeah, the correspondence handbook, which sets out how you—requires the original plus 10,000 copies. But one of those copies is the yellow copy which is the surname copy. And that's the copy that stays, you know, in, permanently stays in the office—the originating office. And so they're all the same, it's just the letter with, you know.

EXAMINATION BY MR. WILSON:

Question. Right.

Answer. And I believe there's like 10 copies plus the surname. Because at the bottom of each copy there will be a notation of a code number of an office, like 100 is the deputy commissioner, 400 is tribal services, gaming is 140. So when it says 140 and it's highlighted it means that copy goes to 140 and then to the Solicitor's Office.

Question. Okay.

Answer. It's just a very bureaucratic process of processing mail.

Question. I think I probably have documents that will show that?

Answer. Yes.

Question. And you'll be able to point that out. Do these have a section for comments in the surname process? Are there verbal comments pertaining to the document that's being passed along?

Answer. Sometimes. It depends. People can make comments right on the—if they have—if they are a—if it's a person who has to sign or surname, they can—they can—and they don't want to do that because they have problems, they can attach a note or whatever.

Usually, when it gets to that point when we're processing it, at least when it gets to my level, everyone has already reviewed it every time and made their changes, so it's a final document going through. And the other person that can probably change it is myself or the Assistant Secretary at that level.

Mr. SADKIN. Can I ask a quick follow-up on that?

Mr. WILSON. Absolutely.

Mr. SADKIN. So in fact, when you initial it, you're more or less signing off on the document?

The WITNESS. Yes.

Mr. SADKIN. It's your approval.

The WITNESS. Yes.

EXAMINATION BY MR. WILSON:

Question. Now, just in the general discussion of the July 14 rejection of the application, you stated the Secretary had decided to exercise his discretion, and then you referred to a number of problems. How were you aware at that time that the Secretary had decided to exercise his discretion?

Answer. Well, it's a figure of speech. I mean the Secretary—all of the Secretary's authority to take land into trust is delegated to the Assistant Secretary. When I say Secretary, I mean the Assistant Secretary. I know because we—we, myself, and George, the Gaming Director, and staff had spent, you know, several occasions discussing the applicants, reviewing the documentation that had come in supporting it. And I was part of the final decision-making process.

Question. Uh-huh. And you say that means in a figure of speech the Assistant Secretary, and that at the time was Ada Deer; is that correct?

Answer. Yes.

Question. When did Ms. Deer make the decision that the Secretary's discretion would be exercised?

Answer. She did not. In fact, she was never involved. The staff and certainly my office made the recommendation to the Assistant Secretary. But at no time prior to that recommendation becoming final is the Assistant Secretary ever involved in any of the—you know the deliberations that take place concerning a land acquisition or any, or any decision that ultimately gets signed off by the Assistant Secretary.

Question. So who then was involved?

Answer. From the Assistant Secretary level?

Question. In the just trying to go back and parse through the decision-making process relating to the exercise of discretion to reject the application, and you've mentioned that it wasn't the Secretary that exercised the discretion. It was the Assistant Secretary, but then correct me if I'm wrong, you stated that it wasn't literally in this case the Assistant Secretary who made the decision to exercise the discretion and maybe I should back up. Was the Assistant Secretary involved at all in this process?

Answer. In the discussions prior to the final decision letter?

Question. Yes.

Answer. No.

Question. No. Was she involved subsequently in any discussions?

Answer. No.

Question. Had she recused herself from the decision-making process?

Answer. She had recused herself to the best of my recollection probably about 2, 3 weeks before the July 15th letter was to be signed.

Question. And how did you become aware that she had recused herself?

Answer. She told me. I was in her office when she made that decision.

Question. And what was her reason or what were her reasons for recusing herself?

Answer. I believe she stated to me that she had contributed to Gaiashkibos who is, who at that time was the Chairman of the Lac Courte Oreilles Chippewas campaign for—I think he ran for Congress. I think that's what it was. And that she was a personal friend of Mr. Gaiashkibos and the other two tribal leaders.

Question. Now, just going back to the decision-making process, Ms. Deer was recused, so if you could give me the names of the individuals who were involved in the decision-making process prior to the July 14 letter being issued?

Answer. The gaming staff. George Skibine, Paula, Paula Hart, Tom Hartman. I believe at the time that there were two or three other gaming staff who had, you know, minor parts of responsibility but were nonetheless involved. Solicitor's Office. The only person that I recall, though, who actually participated in any discussions was the Associate Solicitor at the time, Mr. Anderson.

Question. And is that Mr. Robert Anderson?

Answer. Yes.

Question. And—

Answer. Staff from the Secretary's immediate office, Counselor to the Secretary, John Duffy; Heather Sibbison, I think that was it.

Question. And you—

Answer. And myself.

Question. And you include yourself in this group as well?

Answer. Yes.

Mr. ELLIOTT. Just a second, Jim.

[Conferring.]

The WITNESS. Mike Anderson, who is the Deputy Assistant Secretary, was in one meeting that I was at about 2 weeks, 2-1/2 weeks before the July 15th. But he had—to my knowledge, I don't recall him being at any of the other meetings that I was at. He could have been—you know, because I missed several meetings. There were several meetings and I didn't attend all of them. He was only at one.

Question. So just to summarize, it's your testimony that the ultimate decision was a direct result of the recommendation of staff—

Answer. Yes.

Question [continuing]. And the staff that you listed?

Answer. Yes.

Question. Were the ones that were involved in that process?

Answer. Yes.

Question. When were you first aware that the application would be rejected?

Answer. I had a discussion with my staff, I believe, it was probably about a month and a half after Mr. Skibine first came on board. I think he came on board in February. I don't remember the exact date. It was—it was at least a month into his tenure as the new director who had a preliminary discussion in my office, George, Paula, and Tom, to talk about the documentation and the area office recommendation.

I was not comfortable with the—with the level of justification or lack of justification, I should say, in documentation that the area had submitted in support of their recommendation. And I asked the staff to do some further research and clarification with the area. But at that point, my—my inclination was that this was probably one that we would not move forward with positive findings.

Question. And that was in March of—

Answer. Well, it was—

Question [continuing]. Of 1995?

Answer. It was—I don't recall the exact date. But it was at least a month after George first came on board. And I think he came on board in February, March, April.

Question. And you just stated that you had concerns with the documentation provided by the area office? What specifically were your concerns?

Answer. I believe that there had not been adequate consultation. And having had respondent, you know, 2 years of my own career working in that area exclusively, I was aware of the importance of having adequate consultation, not with the tribes who were going to be impacted, but also the community. Especially if we were going to make a positive finding that there was to be no detriment to the Shoshone community. It was very important to have a good administrative record that showed that we had done everything to inform the community of the impacts of this facility.

We were continuing to receive inquiries from tribes located not immediately close to the facility. The environmental issues, I believe that there had not been adequate justification and work done on the impacts to the community, the municipal services that were going to be impacted, police services. I mean, all the kinds of things that you need to be concerned about when you're going to start bringing a large influx of people into a community, transportation, roads, medical care, just everything.

Question. And what was inadequate about the consultation?

Answer. There had not been—I believe that the State officials had not been contacted. Part of our, the consultation process that I left behind when I left that office as the director was to send letters to everyone concerned, everyone that we thought might have some interest in the acquisition. We didn't leave anyone off. And I felt that in this particular case, because of the location of the three tribes, where they were at, in proximity to where they wanted to open the casino, it was critical that we get everyone's input involved. And especially the Governor. I was concerned about, you know, what the decision of taking the land into trust would have on the other tribes' ability to compact for gaming in the future.

Question. Is it correct to say then that the consultation was inadequate because State officials had not been informed of the fee-to-trust application?

Answer. That was a part of it. I mean I—I mean consultation goes beyond just issuing a letter. I mean the expectation, at least from my level as the senior management official for the Bureau of Indian Affairs, is that there at least be some public hearings or some, some sort of a forum provided to the public to air their, you know, their problems with, you know, and their concerns with the application.

Question. Were there any public hearings concerning the application?

Answer. I—I believe that there might have been one, but I'm not certain.

Mr. SADKIN. Did it make a difference that this was off the reservation?

The WITNESS. It made a lot of difference. I mean that was, I mean it's—my experience working these cases, and I've worked several, is that the communities are more concerned obviously with any application to take land into trust when it's located away from a tribe's existing reservation. And it's clearly, you know, going to impact their community. And this was—they were some distance from, from their existing reservation.

EXAMINATION BY MR. WILSON:

Question. Did you inform the area office that you considered your consultation to be inadequate because they did not—

Answer. I didn't do it personally, but I believe my staff, the gaming staff had discussions with the area office.

Question. Do you know?

Answer. I don't know that they did. I—I mean, I expected them to do so.

Question. Did you instruct anybody to have such conversations?

Answer. I told George that he needed to follow up with the area to make sure that we had an adequate record documenting consultation and all the other—all the other issues that I, you know, had problems with.

Question. Actually, my question was slightly different than that. Did you communicate to the area office that you thought their understanding of the consultation process was deficient?

Answer. Me personally?

Question. You personally?

Answer. No. No, I did not.

Question. Did you instruct anybody on your staff to have a direct communication with the area office about the deficiency of the consultation process?

Answer. To my knowledge, I told Mr. Skibine to follow up with the area with, you know, with my concerns, yes.

Question. And do you know whether he did so?

Answer. I believe—I believe he did.

Question. And when you say that, what did he do to your best of your recollection?

Answer. I don't know. I would—I would expect that he would either send them a letter or make a verbal telephone contact with the area. It's my expectation would be just the way that we—we, as a matter of routine, is that a letter would—you know would be sent to the area.

Question. And this would be Denise Homer?

Answer. To Ms. Homer, yes.

Question. The—your concern that State officials had not been contacted, is that a policy of the Department of the Interior?

Answer. Yes.

Question. Is it a statutory policy or is it codified?

Answer. Well, it is when—well, yeah, in this—and IGRA says that in making the two-part determination, part 1 being detriment to the surrounding community, if you make a finding that the acquisition is not going to be detrimental to the surrounding community, your finding should be based on, you know, after consultation with local and State officials and with nearby tribes. But once we make a finding, it's, you know it's the Governor who has to consent or provide us his agreement that, to the Secretary's decision to take it into trust.

Question. Now, going back to my initial question at the beginning of this line of questioning, I asked you when you were first aware that the application would be rejected. And you stated that it was a period of approximately 1 month after Mr. Skibine assumed his position, which put it in the proximate time frame of March?

Answer. Uh-huh.

Question. And I just wanted to clarify that. You thought at the time, at that time in March of 1995 that the application would be rejected? Is that correct?

Answer. Well, my, at that point I felt that it was—it was highly unlikely that we would approve it, because of the what I—what I felt and what staff told me at that point was the inadequate administrative record supporting the area office's recommendation to approve it.

Question. Would it have been possible to improve the administrative record?

Answer. Yes.

Question. So I'm—

Answer. But I think that had happened. I mean there had been some—I can't say for sure, but I believe that there was a short period of time where the central office staff worked with area office staff to supplement, you know, the application and the information that had been sent in, including, I believe, a letter sent to the Governor

and others, the Attorney General's Office who was the other State official that is typically notified.

Question. To the best of your recollection, were you then the first person among Department of the Interior staff who thought the application should be rejected?

Answer. I don't think so. I think George might have been the first person as the staff director.

Question. Was Mr. Skibine then the first person to review the materials as received from the area office?

Answer. Mr. Skibine and his staff

[Manuel Deposition Exhibit No. HM-1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

EXAMINATION BY MR. WILSON:

Question. I have provided Ms. Manuel with a document that has been marked HM-1, and for the record, it is a letter to the editor from Bruce Babbitt, Secretary of the Interior dated January 2nd, taken from the New York Times, and I believe it appeared on January 4 edition of the New York Times.

If you could take just a moment to review the letter.

And I will go back because there are specific things in this letter that I wanted to discuss with you.

In this letter that the Secretary of the Interior has stated that: "This department does not force off-reservation casinos upon unwilling communities," and that's the second sentence of the second paragraph.

My question to you is, is it Department of the Interior policy that any opposition to an off-reservation casino is sufficient to cause an application to be rejected?

Mr. ELLIOTT. Don't answer that.

Jim, that question is going to one of the central issues in litigation.

Mr. WILSON. I'm asking about Department of Interior policy, though, not about the litigation or anything about the litigation.

I am asking about your understanding of Department of the Interior policy. Actually, I should be more specific. I am asking about it as of 1995; 1994, 1995.

Mr. ELLIOTT. Repeat the question, please.

EXAMINATION BY MR. WILSON:

Question. Was it Department of the Interior policy in 1995 that any opposition to an off-reservation casino was sufficient to cause an application to be rejected?

[Counsel conferring with witness.]

Mr. ELLIOTT. We need to consult.

Mr. WILSON. Certainly.

Mr. ELLIOTT. Okay. I think she can respond to the question.

Mr. WILSON. Okay.

The WITNESS. The answer is, yes.

EXAMINATION BY MR. WILSON:

Question. Well, I was going to ask you what the standard was, but you have adequately told me what the standard was. Any opposition was the way that I phrased the question, so any opposition in 1995 was sufficient to cause an application to be rejected?

Answer. Yes.

Question. Was this communicated to—just let me preface this with it seems like a lot of time and effort and money went into perfecting an application. It was all relevant to the process. Was this communicated to the Ashland office or the Minneapolis office?

Answer. Every area office is aware what the requirements are under 151 and under Section 20. Any particular Section 20.

Mr. ELLIOTT. Let me—one minute.

[Counsel conferring with witness.]

The WITNESS. When you—when they work with the tribes at the local level agency or the area, they know that community support is a key factor. We give them every opportunity, and I think the records in the gaming office in terms of all of the mail, the letters that have gone out with my signature, with George's signature, will verify the fact that we inform the tribes, we inform the communities, that they all have an equal opportunity to present their case and to develop a record. So when I say, yes, we don't put a casino in a community that doesn't want it, I qualify that

by saying, however, that the community has to have a reason for not wanting it there. It can't be just because they don't like Indians, for example.

And in most cases, my experience is that the communities are concerned about environmental issues and impacts to their municipal services. My directive to the area directors since 1994 and the directive before I was deputy commissioner by the then deputy commissioner is that to work with the local communities to try to either mitigate their concerns, or to resolve them. But if a community comes in without any basis for their opposition, we move forward with a—and our record supports a positive finding that there is going to be no detriment to the community, we move forward with a recommendation to the Assistant Secretary for approval, and in fact, there is at least two cases that I was personally involved in where we did that, where the community did not have a basis for their opposition, other than they just didn't want Indians right next door to them.

Question. And I know you have answered this question, or at least around it, but I didn't understand what the basis for the community opposition was in this case?

Answer. Environmental concerns. They were concerned about the impact to their municipal services.

Question. Could those concerns have been cured?

Answer. Probably, at probably great expense to the tribes. I mean we're talking about, you know, such things as providing police services; you know, all the kinds of services that you would need to supplement when you're going to start bringing in a lot of people.

Question. And who made the determination that the expenses were—who made the determination on behalf of the tribes that the expenses were prohibitive?

Answer. I didn't say that that decision was made. You asked me if they could have been corrected, and I'm giving you my opinion that probably, yes, but probably at great expense.

Question. Were the tribes given an opportunity to cure the specific defects?

Answer. I don't know.

Question. Well, now you have testified that you thought in March, or around about the time of March that the application might be rejected. Did you consider it your responsibility to either attempt to give the tribes an opportunity to cure defects or to at least supervise somebody who would attempt to give the tribes an opportunity to cure the defects?

Answer. We probably did. I mean I didn't do it personally; it was George and the staff who are responsible for following up with the area to make sure that all the questions and issues that they have about an application are addressed.

Question. And—

Answer. I don't recall that I personally signed a—and there are cases where I will sign a memo when the application may be just, you know, so bad that, you know, it needs to get sent back. They will prepare a memo for my signature back to the area. I don't recall that I did in this case.

Question. Okay. Well, I don't want to belabor this obviously, but I'm just trying to determine what defects were fatal to the extent that they could not be cured, and correct me if I'm wrong, your testimony is that you're not aware of any specific defect that could not be cured, and that's assuming that there were any defects. I'm not making any statement as to whether there were or not, but that's assuming there were.

Answer. I didn't understand you.

Question. I'm just—I will restate it—trying to get a handle on which defects in the application as identified by the Department of the Interior could not be cured, if there were such defects, and I believe I'm characterizing your testimony that you were not aware of any such defects?

Answer. Well, the community was opposed to it. You asked me if I thought anything that they—what they might be—you know, why they were opposed, and I gave you what I recall to be the reasons that I thought they were opposed, and that was, you know, the impact, the negative impact that it would have on their community, especially because of, you know, inadequate consideration being given to the impact on municipal services and taxes and, you know, all of the things that come along with a large influx of people.

I don't know that the community was willing—I mean that's the other piece to this puzzle, is that the community has to be willing to want to mitigate their, you know, their issues and their concerns. There may have been—I mean there may have been an effort by the three tribes to work with the local community.

Mr. SADKIN. So even if one defect could be cured, there was an accumulation of defects involved, community opposition, municipal services, I think there was a scenic waterway?

The WITNESS. Yes, a lot of environmental, yes.

EXAMINATION BY MR. WILSON:

Question. Were the tribes told what the defects were in order that they might work with the community to solve the problems as perceived by the Department of the Interior?

Answer. To my personal knowledge, I don't know. Generally we do, we advise the tribes—or not the tribes directly; we never communicate with the tribes directly. It is through the area, the area is advised of the problems that might exist in an application and are given—either sent back to them and they are told to work further with the tribe. But I don't recall that. They could have.

Question. In 1995, who was in charge of supervising that process?

Answer. George Skibine.

Question. So—

Answer. As the Director of the Gaming Office, yes.

Question. So you don't know whether George Skibine adequately informed the tribes of what he perceived to be the defects in the application; is that a correct characterization of your testimony?

Answer. Well, I don't, I don't—George reported to me and I supervised him, but not—I didn't micromanage his office. In other words, I didn't—his, along with six other staff offices, are within my—within the Office of the Commissioner, so I didn't—I would assume so, but I don't know.

Question. Did you ever ask him?

Answer. No.

Question. Do you consider it to be a significant part of the application process to give applicant tribes a chance to cure the perceived defects in their applications?

Answer. Yes, I do.

Question. Do you feel that you would need to know whether this had been done before you could sign off on any recommendation to either—well, to deny an application?

Answer. Yes.

Question. But your testimony is you did not do so; is that correct?

Answer. Well, I never had the level of uncomfortableness, I should say, about the staff recommendations where it would cause me to question what they did. In other words, I felt that what they were presenting to me was adequate—everything had been done. The staff had done their work, the area had done all they could. There wasn't anything gaping as far as I could discern from, you know, the discussions that we were having about the application that led me to think that staff hadn't done their job, so I didn't see a need to, you know, to question them about what they did.

Question. In 1995, were you aware of whether there was one particular person or particular persons who were supposed to communicate with the three tribes to explain to them problems with the application?

Mr. ELLIOTT. Jim, I think you are really dragging this out. She has testified the area office.

Mr. WILSON. Who was George Skibine?

Mr. ELLIOTT. No. She has testified that the area office was responsible for communicating directly with the tribes. I don't know where you're going with this, but.

Mr. WILSON. Well, I mean I'm confused. If the area office was in charge of communicating with the tribes, then the question becomes, who was in charge of communicating the specific—the perceived problems with the application to the area office?

The WITNESS. George, the Director, yes.

Mr. ELLIOTT. She has already said that.

EXAMINATION BY MR. WILSON:

Question. And then is it fair to say that you do not know whether he did that or not?

Mr. ELLIOTT. She has already said that.

Mr. WILSON. Okay.

EXAMINATION BY MR. WILSON:

Question. If the policy is as you stated it, why would the area office recommend taking the land into trust?

Answer. Because they want to support the tribes and be an advocate for the tribes, and it's not unusual. Everything that comes from the area offices is always, always in favor of the tribes.

Mr. ELLIOTT. On matters other than gaming?

The WITNESS. On matters other than gaming.

Mr. ELLIOTT. As well.

EXAMINATION BY MR. WILSON:

Question. On all matters?

Answer. On all matters.

Question. Who at the Department of the Interior was responsible for determining whether the opposition, the local opposition was valid local opposition?

Answer. The gaming staff and to some extent my office.

Question. And apart from reading the record, are you aware of any efforts by the gaming staff or your office to determine whether the opposition was valid?

Answer. No. We don't, as a matter of practice, we don't call the local officials. I mean if they—usually what they'll do is they'll send in letters, you know, and those letters are responded to, either by the director or, the director prepares a letter for my signature to go back to the community officials.

Question. I'm just trying to get a handle on the process here. Do you rely exclusively on the record?

Answer. Pretty much, yes, and if there's been public hearings, whatever the transcript of the public hearings indicates.

Question. In this specific case, are you aware of relying on anything other than what is in the record?

Answer. I believe there was some kind of a vote by the city council or the city council, I believe, passed a resolution. There was some kind of official action by the city council, which also, you know, is taken into consideration, opposing it.

Question. Earlier, we were discussing about any opposition being sufficient to reject an application. It would be enough for the Secretary to reject an application if the local opposition came from a desire exclusively to prevent Native Americans from operating a gaming facility?

Answer. I'm sorry, I lost you. Could you ask me again?

Question. Sure. Earlier you testified that any opposition would be sufficient for the Secretary to reject an application to take land in trust for off-reservation gaming purposes. Would it be enough for the Secretary to reject an application if local opposition came exclusively from a desire to prevent Native Americans from operating a gaming facility?

Mr. ELLIOTT. Are you—

The WITNESS. No.

Mr. ELLIOTT. She had testified earlier about the mere fact that the community didn't want Indians next door.

Mr. WILSON. But she also testified that any opposition was sufficient.

Mr. ELLIOTT. But she corrected that by saying that they have to have reasons for their opposition.

The WITNESS. I qualified it. It couldn't be just based on, you know, they didn't want Indians next to them.

EXAMINATION BY MR. WILSON:

Question. And who—I mean to the extent that you know, who was responsible at the Department of the Interior, outside of the area office and your office or the gaming staff office for determining whether the reasons advanced by individuals in the Hudson vicinity were valid reasons?

Answer. For determining whether they were valid?

Question. Yes.

Answer. No one, other than the Bureau of Indian Affairs.

Question. Just to try and clarify that, if you receive a letter from a location saying, there is a problem with this application, and it explains the problem, is it the practice of your office and the gaming office to accept that at face value?

Answer. No. If it's just a letter from John Public with no—who has no apparent connection to the community—I mean we get hundreds of letters. We have groups that form out there like in Kansas City when the Omaha application was—not Kansas City, the Potawatomes and the Kickapoos, when they were proposing to open a casino in Kansas City, we had an antigaming group that established itself calling itself Casin-No. We get hundreds of thousands of letters. When we get letters like that, we don't answer them.

If we get a letter from a mayor of a city, from the Governor, from the Attorney General, we do take those seriously and we look at the issues that they raise, and it depends on who the letter goes to. Most of these letters go to the Secretary of the Interior, so they get channeled down. By the time they get to me, we are, all of us, have become cognizant that there is a strong concern out there, or an interest in this particular case, and so the staff starts doing their homework.

They start calling the area, the agency, to find out what's going on. We try to put as much information together about the subject, that, you know, the writer is concerned about in order to brief senior management.

Question. Were you aware of staff in your office or the IGMS office contacting people in the Hudson area to talk about their opposition to the application?

Answer. I don't think they—I think George had a conversation with one of the city officials, but I don't—I believe it was initiated by the city official. We do not, as a matter of practice, make the actual contacts. If there are contacts to be made at the local level, the area office is responsible for making those contacts.

Question. I don't want to be mysterious here, but the area office recommended that the land be taken into trust and obviously there was a contrary view shaping in your office and the IGMS office?

Answer. We are finding every application that comes in—the staff, any gaming staff and my office never, very seldom agree with the area office recommendation. This was just another very typical case.

Question. But how do you determine if you're rejecting their advice?

Answer. When you look at the record. When you finally pull out the record, pull it apart and start putting, you know, all of the documents in the files to justify each piece of the application. You have to understand that the Section 20 determination has, I mean, we're talking about, you know, at least 50 different things that we look at. And so I don't know if you have seen our checklist that we use for Section 20 and for 151.

You know, we basically go down that list and say do they have this, do they have that, you know. So once you pull out the file, pull the file apart and you start looking at it, then you can see if the area is making a valid recommendation, and there have been occasions where the area has really done its homework, you know, and done a real good job working with the tribe to put together an application that we can support. Siltz was an example where we went positive, we went positive, even though the community didn't want it.

Mr. SADKIN. The area office and the central office have different roles in the process?

The WITNESS. Yes. Portland did its job. They did an excellent job putting together a record and came in, the staff, you know, here were able to, you know, adequately justify recommending favorably.

Mr. SADKIN. And the area office is more or less an advocate for the tribes to the Washington office?

The WITNESS. Yes, yes, that's the role they play.

EXAMINATION BY MR. WILSON:

Question. Is that their statutory role?

Answer. No. It's just a—to be an area director and an area office, the tribes have to—they don't approve or actually make the selection, but they are consulted, and it's just a long-standing policy, ever since, the Bureau of Indian Affairs has been in—and so the area directors feel a great deal of loyalty to the tribes who voted by resolution to recommend that person to the, you know, to myself and the Assistant Secretary for directorship.

Question. But correct me if I'm wrong on this situation. You are speaking of the loyalty of the area office to the local tribes for which they have jurisdiction over, but there were more local tribes opposed to this particular application than there were supporting it. So given your analysis,—

Answer. They had their reasons. I mean I don't know what Denise—you know, if I were in her position, I would consider it. I would look at the fact that she has 36 tribes in Minneapolis and probably all of them would oppose it, but she supports it. I mean I don't know why she—

Question. So I am struggling with this, obviously. Are you testifying today that she relied on improper considerations?

Answer. No, no, I'm not. I'm not saying that at all. I'm saying that I have no knowledge why she would—

Mr. ELLIOTT. You are trying to get inside—have her get inside Denise Homer's head, Jim. She has testified that generally speaking, and, in fact, almost without exception, the area directors recommend in favor of the tribes that are applying for things. To go into the reasons why one area director did in this instance is not within her knowledge. She didn't—

Mr. WILSON. I don't know that, to be honest. I mean maybe it is, maybe it isn't. That's why I asked the question.

The WITNESS. No. I never talked to Denise.

Mr. WILSON. That's why it's important for the witness to answer these questions. Okay.

EXAMINATION BY MR. WILSON:

Question. Given—and I will move on to something else after this, but given how you have characterized the role of the area office in this process, and this may be an unfair assumption, but are you saying that this was a fairly typical situation where the area office, acting the way it acted in the Hudson Dog Track matter?

Answer. It was a typical situation where the area recommended approval, yes.

Question. And their recommendations of approval communicated a certain message to the applicant tribes; is that your understanding?

Answer. Oh, yeah.

Question. Would it be fair to say, then, that it was doubly important or particularly important for concerns raised at the Department of the Interior to be communicated very clearly to the tribes?

Answer. Yes.

Question. And I believe you have testified, but you're not sure whether they were communicated in this particular situation?

Answer. No.

[Manuel Deposition Exhibit No. HM-2 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I have provided Ms. Manuel with a document which is dated April 29, 1994. It's a memorandum for heads of executive departments and agencies, and it pertains to government relations with Native American tribal governments. It's a directive of the President signed by him on April 29 of 1994.

If you could take just a moment to—

The WITNESS. I'm familiar with the document.

Mr. WILSON. Okay.

EXAMINATION BY MR. WILSON:

Question. Specifically, Section B reads: "Each executive department and agency shall consult to the greatest extent practicable and to the extent permitted by law with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals."

I misspoke before when I said it would be the last question I asked on the subject we were discussing before this. Hopefully this will conclude this.

Do you know whether this was done in the Hudson Dog Track matter?

Answer. By central office area agency?

Question. By the executive of the department, by the Department of the Interior?

Answer. I believe it was, if it's the Department of the Interior, yes.

Question. And upon what do you base this belief?

Answer. On the fact that the process—I mean there's no other agency in the Federal Government that takes seriously its obligation to consult, and that's the Bureau of Indian Affairs, and I believe that the area and the agency and the gaming staff worked closely with the tribes on issues that they, you know, that they had to address.

Question. And I'm a little bit confused based on your prior testimony that you weren't sure whether Mr. Skibine identified the perceived defects to the applicant tribes.

Answer. Well, he wouldn't, to the applicant tribes. We never communicate with the applicant tribes. We always go through the area office.

Question. And are you aware of whether they communicated the defects, perceived defects?

Answer. I am not aware. I don't know personally if they did. I assume they did.

Mr. SADKIN. Is it their practice to do so.

The WITNESS. It's their practice to do so.

Mr. SADKIN. Do you have any reason to believe they didn't do it in this case?

The WITNESS. I have no reason to believe otherwise.

EXAMINATION BY MR. WILSON:

Question. Just returning to the document that we have marked Exhibit HM-1, at the bottom of the second paragraph, it states that the Republican Governor of Wisconsin and many others opposed the casino.

Do you know this to be an accurate statement of fact?

Answer. I believe that is correct.

Question. Had anyone contacted the Governor to determine his position?

Answer. I believe that a letter was sent to the Governor after we had determined that they had not been contacted. This was the issue that I raised earlier that I was concerned the Governor's office had not been contacted. The area, I believe, was told to contact the Governor and in fact he was contacted and he opposed it.

Question. Is the Governor's response contained in the administrative record?

Answer. I don't know. I have not looked at the administrative record. It's, you know, three or four volumes. I mean I don't know if you have ever seen the administrative record. It's too much for me to look through.

Question. I spent this weekend looking through the administrative record, and I will be honest, I couldn't find it, and that's why I don't mean to badger you with a question you may not know, but it's a matter of significance perhaps because I will ask you about a letter that you drafted at a different time that discusses consultation with the Governor.

Were you aware of any requests made to the Secretary's office for information about the Hudson Dog Track proposal?

Answer. No.

Question. Were you ever asked for any input into any matters from the Secretary's office about the dog track proposal?

Answer. The Secretary never talked to me about acquisitions.

Question. Well, I'm not asking specifically about the Secretary personally?

Answer. Never about Hudson.

Question. But people in his office, in the Secretary's office, Mr. Duffy, Mr. Collier, Ms. Sibbison?

Answer. Okay. So what was the question, whether to provide briefing information to them?

Question. Well, first, were you aware of any requests for information about the dog track matter that were made to the Secretary's office, individuals in the Secretary's office?

Answer. No.

Question. Do you know whether the Secretary's office always provided correct information in response to requests made to his office?

Answer. I don't know that.

[Manuel Deposition Exhibit No. HM-3 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I have provided Ms. Manuel with a document that has been marked Exhibit HM-3, and it is a long document, and I encourage you to take time to look at it, but I only have a question about one sentence in the document and I will direct your attention to that.

This is a document, it is a letter from former Member of Congress Steve Gunderon to Secretary Babbitt. The statement I am most interested in, the second to last sentence on the first page of the letter reads: "According to your office, since Congress passed the IGRA 1988, the Secretary of the Interior has never"—and I'm parenthetically stating never is underlined in the letter—"approved the acquisition of off-reservation land to be used for casino gambling."

Do you know whether this statement is correct?

Answer. It's not correct.

Question. Are there examples of off-reservation land being approved by the Department of the Interior for casino gambling?

Answer. Yes. I believe we approved two during the time that I was the director. But you have to understand they were contiguous lands; even though they were off reservation, they were contiguous to the reservation, and there was strong community support.

Question. Turning to the final page of what I have given you, there is a short five paragraphs that discuss this issue and on the bottom of the page, there is a handwritten notation: "Get it to him by Monday, 5-1."

Do you recognize this handwriting?

Answer. No.

Question. Have you ever seen this document before?

Answer. Uh-huh.

Question. Did you participate in the drafting of this document?

Answer. I believe it's an excerpt from a briefing document that I probably prepared when I was the director.

Question. Do you know why it was prepared?

Answer. Oh, we prepared—why this particular one was prepared? Someone probably asked us how many off-reservation acquisitions we had approved and land actually taken into trust, which is a very common question from State officials.

Question. Just referring your attention to the final paragraph on this page, it talks about “Three transactions have been prepared for off-reservation acquisitions for class 3 gaming facilities in the States of Oregon, Louisiana, and Michigan. None received the concurrence of the Governor. Consequently, none of the proposals were taken into trust.”

Just to clarify, before when I asked you about the Department of the Interior’s approving applications for off-reservation gambling, I meant to indicate that I was speaking about the process before the Governor concurred or disagreed with the process.

Are there other examples where the Department approved the application for off-reservation gaming?

Answer. Without the Governor’s consent?

Question. Prior to, prior to receiving concurrence or dissent?

Answer. Never. We—well, I guess I don’t understand your question. These three cases the Governors did not consent. Governor Roberts did not consent.

Mr. ELLIOTT. Your question is whether the Department approved them and then sent a letter to the Governor requesting concurrence?

Mr. WILSON. Yes.

The WITNESS. Okay. Yes, these three cases. Yes. I’m sorry, I didn’t understand your question.

EXAMINATION BY MR. WILSON:

Question. Well, the questions aren’t always as clear as they need to be.

Answer. Now, in Louisiana, then they changed, Kashadda is the case where we actually—the Governor changed his mind later, but initially he did not consent.

Question. But these are all examples that—

Answer. Where we approved.

Question. The application went through to the point where there was the official consultation with the Governor for approval or disapproval?

Answer. Yes.

Question. Which is, in the Hudson case, we did not get to that?

Answer. No.

Mr. SADKIN. Are you aware of community opposition in these cases?

The WITNESS. There was none.

EXAMINATION BY MR. WILSON:

Question. You are testifying there was no community?

Answer. Well, no, in the Oregon case there was. Oregon is Siltz. There was strong community opposition, and that was the case that I indicated was based strictly on what we considered to be—they just didn’t want Indians next door to them. The other two, there was strong community support.

Question. Was there any community opposition in either Louisiana or Michigan?

Answer. No. Michigan I think there was a competing casino that, you know, raised some fuss, but—

Question. So there was some opposition?

Answer. Yeah, but it wasn’t community, it was another tribe wanting to open a casino in Detroit.

Mr. ELLIOTT. Can we take a break?

Mr. WILSON. Absolutely.

[Recess.]

EXAMINATION BY MR. WILSON:

Question. Were you personally aware that any of the tribes opposed to the Hudson Dog Track application had ever made political applications?

Answer. No.

Question. Were you aware of whether the Minnesota Indian Gaming Association ever made political contributions?

Answer. No.

Question. Were you aware of whether Marge Anderson or Deborah Doxtater had ever been invited to White House coffees?

Answer. No.

Question. In 1995, were you aware of any communications between the Department of the Interior and the White House or the DNC involving the Hudson Dog Track matter?

Answer. No.

[Manuel Deposition Exhibit No. HM-4 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I have provided Ms. Manuel with a document that has been marked HM-4 dated November 15. It is a memorandum from the office of the area director to the Assistant Secretary, Indian affairs. If you would just take a moment to review it?

Answer. What's the date?

Question. I believe it's November 15, if you go to the signature. I apologize for the poor copy, but that's what we received.

Answer. Okay.

EXAMINATION BY MR. WILSON:

Question. Did you receive a copy of this memorandum when it was transmitted?

Answer. No.

Question. Well, did you receive a copy of this document at any time?

Answer. No.

Question. Have you ever seen this document before today?

Answer. I saw it after the Gaming Office had received it. It was some time, I think it was in February or March when we had a meeting with—I had a meeting with George and Tom about the application, and they brought it along with them. Perhaps the first time I had seen it.

Question. Did you read this document?

Answer. No. Well, I scanned it. It's very typical of all of our—so I know what's in it, but I didn't read the actual findings of the area.

Question. What was your understanding of deadlines for comments that had been communicated to all parties in the Hudson Dog Track matter?

Answer. We never have deadlines. To my knowledge, we didn't have any deadlines. We keep the record opened up until the very last—until the day the Assistant Secretary signs it. I don't believe the area communicated any deadlines, but we didn't.

[Manuel Deposition Exhibit No. HM-5 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I have provided the witness with a document that has been marked as Exhibit HM-5. It's a memorandum dated April 20, 1995, from office of the area director to the Assistant Secretary, Indian affairs.

Have you seen this document before today?

Answer. No.

[Manuel Deposition Exhibit No. HM-6 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I have provided Ms. Manuel with a document that has been marked Exhibit HM-6. It's a letter signed, at least there is a typewritten signature of Hilda Manuel and it's to former Representative Steve Gunderson. If you would take just a moment to review that.

The WITNESS. Yeah, I remember this. I signed this.

EXAMINATION BY MR. WILSON:

Question. The first thing I wanted to talk about, there is a sentence in the second paragraph beginning just over halfway through the paragraph that states: "However, it is important to point out that any opposition should be supported by factual documentation. If the opposing parties do not furnish any documented evidence to support their position, it is difficult, if not impossible, to make a finding that the acquisition is not detrimental to the surrounding community as required by the Indian Gaming Regulatory Act."

Is this an accurate statement?

Answer. Yes.

Question. Why is factual documentation required?

Answer. To rebut any finding that the area has made or the tribe has made regarding, you know, an issue. And we're talking usually about infrastructure issues. I mean when there's community opposition, it's usually, you know, they have some—they are making some allegation about something not being appropriate or some problem occurring, and typically it will be, you know, environmental or problems with municipal services, and so we ask them to approve it, and if the tribe

has evidence that says to the contrary, they are provided that also so they can see what the tribe's position is.

Question. And who at the Department of the Interior, either your office or IGMS, thought that the factual documentation—let me rephrase that.

Who in your office or at IGMS believed that the opposition to the Hudson Dog Track was supported by factual documentation?

Answer. I don't know that I can answer that. I believe the staff in the Gaming Office all have a responsibility to review the application. I don't know that any one of them made—I mean they all have their pieces, so I'm not sure I understand what you're asking me.

Question. Well, put another way, do you know of anybody in your office or the IGMS office who thought the factual documentation as presented by opponents to the dog track was not adequate?

Answer. Could you ask me again? I'm sorry. Do I know whether anyone in my staff—

Question. Your staff or IGMS?

Answer. Well, gaming is part of my staff. They are in my office. They are a staff office to me. If anyone in that office did—

Question. Thought that the factual documentation provided by the opponents was inadequate?

Answer. I don't believe anyone did. I mean we never—we never sat around and looked at, you know, looked at the file to say this is inadequate. When the staff come to me to discuss the case, they come to me with an opinion already formed in their minds about what it is they're going to say to me, and if it's, you know, if it's to talk about environmental, I make the assumption that they have looked at the record and have come to a decision that it's adequate or inadequate.

I trust—in other words, I trust their judgment about, you know, doing their job.

EXAMINATION BY MR. WILSON:

Question. On the second page, the first full paragraph begins the consultation with appropriate State, local government officials, and officials of nearby tribes is conducted by the local BIA area office. Is that a correct statement of the process?

Answer. Uh-huh. Yes.

Question. At the conclusion of that paragraph, it says the record is submitted to the Assistant Secretary and it appears for further review and approval. Just reading this paragraph, it seems to communicate that the consultation takes place at the area office and that there is no consultation at the Department of the Interior main office?

Answer. That's true.

Question. That is true?

Answer. We just don't have the staff to do it.

Question. Okay.

Answer. Yeah. Yeah, no, we don't attend consultations.

Question. In the second complete paragraph, the second sentence reads, "If the application is found to be factually documented to support a favorable determination by the Secretary, positive findings of fact on the two-part determination are prepared along with the letter to the Governor of the State seeking concurrence and the Secretary's determination." Is that a correct statement?

Answer. Yes.

Question. I'm a little bit confused by your earlier testimony that the Governor of Wisconsin was contacted to determine whether he supported or opposed the casino. And it appears that would not comport with your statement here because you're saying to Congressman Gunderson that, if the application is found to be factually documented to support a favorable determination, then you contact the Governor.

Answer. No.

Mr. ELLIOTT. Before you answer that, I think what she said in response to that question was that she believed the Governor had been contacted. She didn't know that for a fact. I mean, your presumption in this case is that she had testified that she—that the Governor had indeed been contacted.

Mr. WILSON. Okay.

The WITNESS. But the process itself, the consultation process, IGRA requires a consultation, and this is almost a quote, with appropriate State and local government officials and officials. So the Governor gets a letter, and the AG gets a letter at the consultation stage. And then the Governor gets a letter at the two-part determination stage. They're different letters.

Question. Okay. Okay. And then just working down into the fourth full paragraph on this page, it states, if gubernatorial concurrence is provided, the land may be

taken in trust for gaming purposes. At this point, the tribe allegation application is then reviewed to determine whether the criteria of 25 CFR part 151 have been adequately addressed. Is it your understanding that this is what happened in the Hudson Dog Track matter?

Answer. No. We never got to a 151. The—Section 20 does not give the Secretary authority to take the land into trust. This regulation codifies the statutory authority, which is 465—25 U.S.C. 465. So once we make the determination, we never got to 151 because we never got passed, we never got to part 2 of Section 20, which is the best interest test. So under 25 U.S.C. 465, the Secretary has the discretion just to decide, not even to review the 151 criteria. I mean that was just—he felt it was futile at that point to go any further and just didn't do—didn't get to that point.

Question. So is it fair to say, then, the application was rejected exclusively because of the community opposition prong of Section 20 of IGRA?

Answer. It was rejected because we determined that there would be detriment to the surrounding community.

[Manuel Deposition Exhibit No. HM-7 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I've provided Ms. Manuel with a document that has been marked Exhibit HM-7, a June 8th, 1995, memo from Indian gaming management staff to the Director of the Indian Gaming Management staff. Have you seen this document before today?

Answer. No. No. I've never seen this.

Question. Okay. Just directing your attention to the first paragraph of this document, the last full sentence reads: "Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests." Do you know the reference to the staff recommending, do you know who those people are?

Answer. I think it's—this is Tom Hartman's memo. I see his signature is here, so I'm assuming it's Tom recommending that.

Question. Did anybody participate in the drafting of this memo?

Answer. I don't know.

Mr. SADKIN. Let me point out that the memo is stamped draft at the bottom.

The WITNESS. I would not see it because it's from Tom to George. It's an internal office memo.

EXAMINATION BY MR. WILSON:

Question. But your testimony is that you did not take part in any discussions—

Answer. No.

Question [continuing]. During which staff recommended that the proposed acquisition would not be detrimental to the surrounding community?

Answer. No.

Question. If—just turning your attention to page 4 of this document, the—just focusing on the third paragraph which discusses a number of letters in support of the application and the final clause reads that—or the final sentence reads "Sandra Berg, a long-time Hudson businessperson wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes."

If that were true, and I'm not characterizing it as being true or false, but if it were true, would that have any bearing or would it be a consideration in the decision-making process?

Answer. I don't understand what that statement means.

Question. Well, just stepping away from this little statement, if it were true in an application to take land in trust that the opponents of the application were—any opponents were receiving money from other opponents, would that be an issue that you think would bear at least examining or looking into?

Answer. I don't know. I mean, I—I'm not sure I—we—we look at only the—the factors that we consider and that we've developed as part of the checklist process, and as part of 151, the criteria that's contained in those, in the regulations and in the practice and the checklist of the office. So I don't know, I guess I'm not sure exactly what—what you're asking me.

Question. Well, I'm trying to get a sense of the integrity of the process. Because it appears—

Answer. It's never come up for one. I mean we've never had this situation. I've never had a case where, you know, where that kind of a fact in there has been presented. So I don't know. I honestly don't know what we—and I don't think we've

ever had a case like that to date. I never had one personally and I don't think George ever had one. So I don't know what we would do.

Question. Just stepping back to the general, I mean, taking an example of, if you are aware, for example, of people making payments to people to write a letter of opposition—

Answer. Uh-huh.

Question [continuing]. To an application, I'm speaking in the general sense, would that in your mind diminish the impact of the letter in opposition?

Answer. It—well it—I don't—I don't—personally, I would feel about it the same way I feel about tribes reaching agreements with local governments and states to share profits with them. I don't believe that IGRA has any authority for—for States to strong-arm the tribes into sharing their gaming revenues, but they do. So I would have the same feeling about it, but it's not dispositive of, you know, of the—I mean, I don't think it's an end all—it wouldn't influence, you know, the deliberations into the—into the factors that we have to consider.

Question. If it came to your attention, would you investigate the matter?

Answer. Well, I would probably—probably ask, you know, the tribe or whoever is allegedly receiving, you know, the payment.

Mr. SADKIN. Is there any evidence in this case that the opposition was funded—was solely created by payments from opposing tribes?

The WITNESS. Not—I wasn't aware of anything.

EXAMINATION BY MR. WILSON:

Question. Turning to page 16 of this document, the final paragraph reads: "Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the tribes and the agreement for government services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pri-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination for best interest of the tribe and its members be completed."

Now, I know you've testified that you have not seen this document before today. Would it be a matter of some consequence if staff did state that they thought detrimental impacts are mitigated through proposed actions?

Answer. Only if the memo came from George as the Director and it was not a draft and it was addressed to me.

Mr. SADKIN. So was this the gaming staff's recommendation?

The WITNESS. No. I don't—I've never seen this. It looks like it's a memo from Tom to George. And it's signed—I mean it's a draft. So obviously Tom was, you know, had some preliminary thoughts and wanted to share them with George. And it never came to me so it wasn't an official memo.

EXAMINATION BY MR. WILSON:

Question. Apart from the July 14, 1995, rejection of the application, did you ever receive a memorandum that articulated reasons for rejecting the application?

Answer. Yes. From George.

Question. And what was the content of that memorandum?

Answer. I don't remember. It's—it was—it's a memo that—it's one of those that has to the Assistant Secretary through Deputy Commissioner from Director of Indian Gaming.

Question. Okay.

Answer. I have not even looked at it since—

Question. Okay.

Answer [continuing]. 2 years ago. I don't know that I remember what it looks like. [Manuel Deposition Exhibit No. HM-8 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I've provided Ms. Manuel with a document that has been marked as Exhibit HM-8 and it's stamped draft. It's to Assistant Secretary Indian Affairs through the Deputy Commissioner of Indian Affairs to George T. Skibine.

Have you ever seen this document before?

Answer. Yeah. I think this was the draft that I had in my, in my file.

Question. Do you recognize at the top right-hand corner of this document there's a handwritten notation, it says "HM document number 7?"

Answer. Uh-huh.

Question. Do you know what that refers to?

Answer. No.

Question. This document—do you remember reading this document?

Answer. Yes.

Question. It states here on the first page on the last full sentence of the first paragraph, "Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests."

First of all, do you remember when you received this document?

Answer. I think it was in February sometime. I think this was—let me see if this was the one that has the best interest. I believe sometime in February.

Question. Do you have any specific recollection of when it was that you received this document?

Answer. No, I do not.

Question. You testified earlier—you stated earlier, if you would refer to the second page, I mean, I obviously have no idea what your recollection of this document is, but there are references to a number of documents reviewed and analyzed, and some are dated in April and May. Just looking through this list of documents, reviewed and analyzed does this refresh your recollection as to when this document was received?

Answer. No, I don't remember.

Question. Given what you've discussed earlier about when you first thought the application would be rejected, do you recall being surprised by reading in a document, draft document, that the staff recommends that the Secretary determine that the proposed acquisition would not be detrimental to the surrounding community?

Answer. No. Because we—we—before the—before—and I think this actually, I think Tom might have drafted this, also, and George, he put George's name on it. We had several discussions before they actually put this in writing. And our—our thinking was that we would probably end up approving it if the, you know if they fixed the problems that the staff are saying they are having problems with. So I wasn't surprised.

Mr. SADKIN. This was also drafted, stamped "draft," is it not?

The WITNESS. Yes. We go through several drafts. And I mean sometimes the staff will prepare, you know, both sides.

EXAMINATION BY MR. WILSON:

Question. Now, you just stated that, that it was thought that the application would be approved if they fixed the problems?

Answer. Uh-huh.

Question. Who is the "we" in that statement?

Answer. George, Tom, myself, the staff.

Question. I mean, do you recall any other specific individuals?

Answer. No. I—well, the meetings with the staff was either always with George and Tom or just George alone, George and I having, you know, weekly meetings, discussions about just everything in gaming. And you know we would talk about this. No one else.

Question. Given the—were the problems ever articulated in your meetings with Mr. Skibine and Hartman and others?

Answer. Just one or two of them. I remember Tom had great concerns about the financial deal that the tribes were getting into. He didn't go into a lot of details, but I mean I do recall that he felt that it was not a good deal. But we never—because they were very preliminary determinations on his part, I never asked, because I figured, if we got to the best interest test, he would have a memo probably this thick telling me why it was not a good deal or why it was a good deal.

Question. Uh-huh.

Answer. We talked about municipal services. I mean, there was, you know there were a number of conversations about maybe one or two specific problems, the consultation, the, you know, the Governor not being contacted was one example.

Question. Did you think those problems would be solved?

Answer. Well, those were. I mean those appeared to be, you know, minor, except for maybe the best—the financial deal. I mean, it's—it's very hard to try to second-guess a tribe's judgment about a deal they feel they made, you know, with all the wisdom that you can imagine. And so, I mean—

Question. But that goes to the second prong?

Answer. Exactly.

Question. The tribe prong?

Answer. Exactly.

Question. And the prong of detrimental in the community, did you feel that the problems as perceived and identified during your meetings could be solved?

Answer. I don't think I ever made that kind of a judgment. The discussions were, you know, were very generalized in that, you know, George would say something about a problem. And my—I mean, I never formed opinions at that very point in time about whether something could be fixed or not. There, George and staff knew what my expectations were. And that is that they would do the follow-up with the area, you know, to whatever is required of them. It didn't become an issue, if ever, and I'm talking about the typical case, until I guess a document that I'm ready to sign and, you know, and I see something glaring at me. And then I ask questions. But—

Question. So you testified earlier that you did receive a memorandum that indicated that the application would not be approved.

Answer. Yes.

Question. And do you recall whether that was from Mr. Skibine or—

Answer. I believe it was.

Question. And do you recall whether it was through yourself to the Assistant Secretary?

Answer. I believe it was.

Question. Do you recall when you received that document?

Answer. It—it would have been or should have been on the same day that the decision letter was signed, if not 2 or 3 days before.

Question. You mentioned it would have been on the day that the decision letter was signed, and you said if not, 2 or 3 days before. Mr. Skibine—I mean, it's my impression that Mr. Skibine's not the ultimate decisionmaker in this type of matter; is that correct?

Answer. He—he is the—he's the expert. So his recommendation is what I rely on and what the assistants, and what—and the recommendation I make to the Assistant Secretary is what she relies on. So in that sense he is, because he's designated the expert in gaming.

Question. So, in your opinion, would it be an appropriate period of time to provide a memorandum discussing the issues that would lead to the rejection on the same day as the rejection was signed?

Answer. I'm sorry, ask that again.

Question. In your opinion, would it be appropriate for a memorandum discussing reasons to reject a proposal to be provided to the Assistant Secretary on the same day that the application would actually be rejected?

Answer. Typically, we get—I mean, I'm just reflecting back on how other—you know other cases are handled. It could have—I mean, I guess I don't think one way or the other whether it was appropriate or not. It could have been 3 or 4 days before. It didn't matter to me, you know, if I got it the same day or if I got it earlier. But I can't remember in this case what happened.

In fact, now that I'm thinking about it, maybe I didn't even get a memo from George. I don't remember. I've not looked at this file in 2 years. But in—in the typical case, I would get a memo from George on the same day the memo would be on one side of the folder and the decision letter on the other.

Question. So if you did not get a memorandum from Mr. Skibine in a matter like this, explaining why something was to be done, that would be, is it fair to say that would be an atypical case?

Answer. Not in a rejection. I mean, not in a case where we, where we're not approving. These long memos are usually the, you know, accompany the decision letter authorizing the area director to take land into trust, because it, the staff have made a recommendation to approve it. But in a case where we're not going forward, it's probably very likely George didn't prepare an analytical memo, and the letter was, you know, what I—what I surmised. And that's not, it's not unusual.

Question. Uh-huh.

Answer. It just depends on the Director.

Question. So just to try and summarize, I hopefully can save many questions by just summarizing it in one way. In terms of the detriment to the community prong of Section 20, it was your expectation that Mr. Skibine would have taken the appropriate steps to determine whether problems could or could not be solved in relation to the detriment to the community analysis?

Answer. I expected the gaming staff, including George, even though he was new, to know what to do: Everyone there had worked for me personally before George came. So they all knew my style and they all knew what I expected. So I expected that they would continue, you know, to process the application in a manner that we had been doing in the past 4 years.

Mr. SADKIN. And you knew there was local opposition well substantiated and documented in this case.

The WITNESS. Yes.

EXAMINATION BY MR. WILSON:

Question. Just for the purposes of an administrative record, which is detailing all of the steps that go into—go into the decision-making process and the ultimate decision that is made, why did you accept the process that permitted many, many memoranda to be written in support of an application, but with no written documentation as to why the—

Answer. No, that was unusual. This was Tom's—we never did this. Tom did this. This was—this is something he likes to do. But I think, you know, when I ran that office, the only memorandum I got from staff are their piece of specialty or their expertise. The environmentalists gave me the NEPA stuff. The realty specialists gave me the realty stuff. The financial analyst gave me the financial analysis. I never got a memo that tried to incorporate everything into a final document. So this is very atypical of the way that office was run.

Question. But—

Mr. ELLIOTT. But you characterized in your question as many, many documents. You brought up two, one of which Ms. Manuel has never seen.

The WITNESS. I never seen.

Mr. ELLIOTT. So I mean, I'm not sure that you're characterization of what was happening is accurate.

EXAMINATION BY MR. WILSON:

Question. I mean, the record consists, for example, of the November 15, 1994, memorandum from the area office, the April 30, 1995, recommendation from the area office, the finding no significant impact from the Ashland office that went through. So I apologize for using the term, "many, many?"

Answer. I never see those.

Question. But there are certainly documents that are in the administrative record that explain to someone reviewing the administrative record for the purposes that administrative records are assembled what the decision-making process is. And I'm just, because I'm not part of your decision-making process, obviously, I'm at a bit of a loss to understand how their administrative record can accurately reflect the administrative decision-making process if it's acceptable for there to be no supporting, and I'm characterizing this, maybe there are lots of supporting documents for reasons to reject the application in this case. But that's my—

Mr. ELLIOTT. Before she answers that, Jim, you understand and you're asking the question, I assume, that this is not a formal adjudicative process that requires under the APA a formal administrative record, and the fact that an administrative record was created after the fact for purposes of litigation.

The WITNESS. Yeah, that's right.

Mr. ELLIOTT. Is not—I mean that's assumed in your question.

Mr. WILSON. (Indicating in the affirmative.)

Mr. ELLIOTT. All right.

The WITNESS. And what I was going to say is that the other—because of that, in a rejection or a decision not to move forward, we don't have a need to the same level of—the same level of, I guess, justification that we're required to produce when we are approving something. I mean, the 151 is fairly specific about, you know, what criteria and factors you have to, you know, you have to address. Section 20 is the statute itself and is not except for two very general requirements. And so the area, when their recommendation comes in, it's, you know, it's recommending approval.

So, of course, they're going to put everything in there that's going to support that. And even the agency may be, I don't know if the agency submitted any documentation in this case, but on a rejection, I guess I just don't, don't see the need for the staff to go through some kind of a same level of detailed analysis.

[Manuel Deposition Exhibit No. HM-9 was marked for identification.]

EXAMINATION BY MR. WILSON.

Question. I've provided Ms. Manuel with a document that's been marked Exhibit HM-9 for inclusion in the record. And it is a fax cover sheet with a number of names. It's dated July 14. And it appears to be a draft of the ultimate letter rejecting the Hudson Dog Track application. Did you make any comments to any of the drafts that ultimately lead up to the July 14 rejection letter?

Answer. I don't—I might have made some minor editorial changes. I don't remember, though. Yeah. I don't know if I asked for a rewrite. They put that on everything, even if it's a change. I don't believe I asked for a rewrite. There's—it is indi-

cated on the last page. I think I might have made some editorial changes here and there.

Question. And is this an example of the surname process?

Answer. Yes.

Question. That we were discussing at the beginning of the deposition?

Answer. Yes.

Question. Thank you. Did you have any discussions with anybody about the timing of the release of the rejection letter?

Answer. The timing?

Question. Yes. When it was to be released?

Answer. No.

Mr. ELLIOTT. You mean in advance of its being released?

Mr. WILSON. Correct.

The WITNESS. No.

EXAMINATION BY MR. WILSON:

Question. When did you—when did you first know that the rejection letter was going to go out? Let me back up. When were you first aware that the application would be rejected?

Mr. ELLIOTT. Isn't that what you've asked her back 2 hours ago, when she thought it would be rejected? Or are you asking when she first saw a draft of the decision letter?

Mr. WILSON. When it would be. I asked when she first thought it might be rejected.

Mr. ELLIOTT. Okay.

Mr. WILSON. And she testified early in the process. Now is it your testimony—

Mr. ELLIOTT. When she actually knew.

Mr. WILSON. That you actually knew it would be rejected in March or April of 1995.

The WITNESS. No, I think the final decision, if that's what—I mean when everyone finally came to the same was the latter part of June.

EXAMINATION BY MR. WILSON:

Question. So you were aware that the application would be rejected at the end of—somewhere at the end of June?

Answer. Yes. Because I was part of the decision making to reject it.

[Manuel Deposition Exhibit No. HM-10 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I've provided Ms. Manuel with a document that's been marked HM-10. And if you could take just a moment to review this, it appears to be an e-mail from George Skibine from Hilda Manuel.

Now, in this e-mail, Mr. Skibine characterizes the—he mentioned whether the Department will again stand by its position that “naked” political opposition of the surrounding communities without factual support is enough for the Secretary to refuse to make a finding that the proposed acquisition is not detrimental to the surrounding community. I'm looking at the center paragraph here in the e-mail.

Mr. SADKIN. With the word “naked” in quotes.

Mr. WILSON. With the word “naked” in quotes.

At the very end of this, Mr. Skibine says I think that is a fair question for plaintiffs to ask.

Did you discuss this issue with Mr. Skibine?

Mr. ELLIOTT. Just—you are getting into the litigation now.

Mr. WILSON. I understand that I'm not going to state it wrong.

Mr. ELLIOTT. And this is the plaintiffs—I mean he's characterizing what the plaintiffs are saying in terms of their issue in a litigation.

Mr. WILSON. Uh-huh.

Mr. ELLIOTT. Now, if you're asking her whether she had that conversation with Mr. Skibine prior to the decision being made—but I'm not sure if this goes to other than the litigation and the issues in the litigation, at least the way your question is asked.

EXAMINATION BY MR. WILSON:

Question. I guess what I'm most interested in knowing is why did Mr. Skibine think that this was a fair question for plaintiffs to ask?

Answer. I don't know. I don't know what George thought.

Question. Did you discuss this issue with him to the best of your recollection?

Answer. No. I don't—I don't believe I went to this meeting, if they had a meeting, because I don't remember being at any meeting where we talked about this [Manuel Deposition Exhibit No. HM-11 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I've provided Ms. Manuel with a document that's been marked Exhibit HM-11. It's dated May 22. And I believe it's 1996, but it's very unclear. It's a memorandum to Ms. Deer from Ms. Manuel. And there are a couple of pages that I wanted to discuss if you take a moment to look through it. But I'll direct your attention to those passages when you're ready.

Answer. Okay.

Question. On the fourth page, the pages are not numbered, but it's the fourth page from the front, there is a paragraph that reads, "Under the guidance of the Office of the Secretary, the tribe and the towns engaged the services of a mediator, the Conflict Management Group, in parens, CMS, of Boston, Massachusetts to seek a compromised position on the issues. Unfortunately, the effort was not successful because the towns were unable to commit to an agreement without a referendum."

The first sentence refers to seeking the services of a mediator to address concerns, presumably voiced by the community closest to this particular matter. Did you ever discuss trying to facilitate resolution of the problems or conflicts between the opponents of the Hudson Dog Track and the applicant tribes?

Answer. No.

Question. Why in the situation involving that, the Mashantucket Pequots, did you take that step?

Answer. I—I personally didn't agree with—this was the decision that was made by the Assistant Secretary and the Secretary's office. I had—I dissented in this agreement, doing the mediation. I believed we had done all we could. The towns were not—they didn't want the Pequots to have this land.

Mr. WILSON. But in this case, the Secretary's office did participate in the decision to seek the assistance of a mediator to address the problem between the local community and the applicant tribe.

The WITNESS. Yes.

Mr. SADKIN. Is this land contiguous and existing?

The WITNESS. Yes.

Mr. SADKIN. And does that make this different than the case, the Hudson case?

The WITNESS. It's within the settlement area, I believe, yes.

EXAMINATION BY MR. WILSON:

Question. Did ultimately land, was land taken into trust for the Pequots after the mediation took place?

Answer. Let me see. We did, but we're now in the—the towns have sued us.

Mr. SADKIN. So you can't win with either decision.

The WITNESS. No. Yeah, this one's in court, too.

EXAMINATION BY MR. WILSON:

Question. And on the final page of this memorandum, in the first full paragraph, and by final page I'm looking not at the last page, but the page that's signed by Ada Deer and dated 5/22/96. It states in the first sentence, in conclusion, we believe that the tribe has made a good faith effort to resolve the conflicts between the town—between the towns and the tribe. Was that your understanding of what happened in that situation?

Answer. Oh, yeah.

Question. In the Hudson Dog Track matter, did you have an understanding of whether the tribes had or had not made a good faith effort to resolve the conflicts, perceived conflicts, if there were any, between the local communities and the tribes?

Answer. I believe they had. I believe that there was some agreement that they had tentatively reached, which eventually didn't materialize.

Question. And when you say didn't materialize, I'm not following you.

Answer. I'm not sure why. Either the town, the council wanted more money than the tribes were willing to give up, I don't know what the reason, but I believe there was a tentative agreement or municipal services. In other words, the tribes were willing to pay for more cops.

Question. These were to address some of the concerns you discussed earlier in the deposition?

Answer. Yes, yes.

Question. All right. Do you know whether their good faith effort was not sufficient to resolve the conflicts between the towns and the tribe?

Answer. I don't know. I mean in the Pequot case, the Pequots were offering each of the three towns \$15 million. I mean this doesn't say this here. I mean that wasn't enough, so I don't know why.

Question. The final two sentences of this paragraph read: "It is apparent to us that the towns do not wish to cooperate with the tribe in its efforts to improve self-determination or economic development. Historically, the non-Indian population of Connecticut has opposed any land acquisition by a tribe. We feel that the tribe has tried to cooperate with the non-Indian communities and that we should consider the benefits to the tribe."

Obviously, I apologize there are three sentences and not two. Now, you mentioned earlier that you actually dissented from this approach—

Answer. On the mediator.

Question [continuing]. On the mediator aspect?

Answer. Yes.

Question. The final sentence that states we feel that the tribe has tried to cooperate with the non-Indian communities and that we should consider the benefits of the tribe, do you consider in the Hudson Dog Track matter whether it was significant that the tribe either did or did not try to cooperate with the non-Indian communities?

Just to cut through a lot of words, was it a major consideration that the tribe tried to cooperate with the non-Indian communities?

Answer. It was a consideration. I don't know that it was a major consideration.

Question. Well, to the extent that the cooperation might have eliminated or ameliorated the concerns of the local community and allowed this application to go—

Answer. I don't think the three tribes went to the extent the Pequots did. I mean the record didn't show that. I mean that wasn't—the Pequots, they did more than—they had community meetings—I mean there was like almost a whole year of an effort on their part to try to work with Stonington, the three towns that surround the Pequot reservation. So I mean it was very, very significant on the tribe's part, you know, what they tried to do. But in Hudson, there was just no evidence other than, you know, the effort and the tentative agreement that I, you know, that the tribes went to the same extreme that this case illustrates.

Question. But correct me if I'm wrong, you testified that you're not entirely certain whether they were informed of the perceived deficiencies?

Answer. But it wasn't a question of—I mean the tribes know the process, believe me. They know the process, because they come in way beforehand and, you know, they—they talk to other tribes. So they know what it is that they have to do. The agreement that they—that they were trying to reach with Hudson, they initiated on their own. We never even raised that as an issue with them. They were, you know, they were already, you know, thinking ahead as to what, you know, the City of Hudson would object on.

Question. Uh-huh. But correct me if I'm wrong, the applicant tribes could not define or ascertain what the Department of the Interior would consider to be fatal to the application unless it was communicated to them, correct?

Answer. They got the checklist. They had the checklist all along. So they knew what was expected of their application and what—that's part of it. When a tribe calls into an agency or an area and says what do we need to do to take land into trust, the first thing they're shipped off is the checklist and 151 and then the name of the tribal ops person, tribal operations person who will serve as their contact at the area.

Question. Do you know whether the tribes were under the impression that the application would be approved?

Answer. I don't know. I never spoke to any of the tribal leaders.

Question. So I mean, is it fair to say that you would characterize the Hudson Dog Track application as a situation where applicant tribes went just so far and refused to go any further in terms of meeting the perceived deficiencies of their application?

Answer. Well, I don't know if they refused or not. All I'm saying is that I knew that there was some effort on their part to reach agreement with the city. And what happened, I don't know.

Question. But just working with the Pequot situation, by analogy, here there was a very clear example of trying to work with the Pequots to make sure that everybody understood what the problems were. Do you perceive it to be exactly the same situation in the Hudson Dog Track matter?

Answer. No. It's different. The Pequots initiated a lot of this on their own. They brought us into this process. They engaged us in a—to try to help them get to the three towns. So, no, the Pequots they were out there, you know, doing all this on

their own. And in fact, the decision to—for the mediator they initiated with the Secretary's office.

Question. Is it your understanding that the Mole Lake Sokaogon, the Red Cliff Chippewa, and the Lac Courte Oreilles did not request of the Department of the Interior what they had to do to fulfill their part of the application process?

Answer. I don't know if they did or not. If they did, they would have—they would have talked to the gaming staff and/or the area office.

Question. But I mean going back to, the area office sent to Washington a number of recommendations that the application be approved. So obviously to speak with the area office would be to get information that is probably, I mean certainly in this case was favorable to their, you know, to their thinking on how the application was going.

Answer. Uh-huh.

Question. Unless that misinformation or disinformation were corrected, they would be relying on people who thought that the application would be—

Answer. Not.

Question [continuing]. Approved?

Answer. Not necessarily. Because if the area is talking with the central office and they're communicating, they know, you know they're talking to each other. And the area becomes aware of what the problems might be. And they in turn relate those concerns to the tribe.

Question. Right. I understand. Are you aware of any instances where anybody at the Department of Interior in Washington communicated to anybody in the area office that the application might not be approved?

Answer. No.

Mr. WILSON. I think this is the final document and we are coming close to the end, so hopefully we will be able to wrap up on my part very soon.

I provided Ms. Manuel with a document that has been marked HM-12 for the record. It appears to be an e-mail from George Skibine dated July 8, 1995, to a number of individuals, and if you could take just a moment to review this document. [Manuel Deposition Exhibit No. HM-12 was marked for identification.]

Mr. ELLIOTT. Could we note for the record that none of those individuals to whom it is addressed is Hilda Manuel?

Mr. WILSON. Yes.

Mr. ELLIOTT. Thank you.

EXAMINATION BY MR. WILSON:

Question. Have you seen copies of this e-mail before?

Answer. No.

Question. It refers to a redrafted version of the Hudson letter being distributed, and it indicates, "Please have copies made for Bob Anderson, Kevin, Troy and Hilda."

The thing I am most interested in asking about is the next sentence which says, "The Secretary wants us to go out ASAP because of Ada's impending visit to the Great Lakes area."

Now, bearing in mind that you haven't seen this document before, I'm more interested in just trying to determine whether you are aware of any communications that tied the release of the July 14 rejection letter to Ms. Deer's visit to the Great Lakes area?

Answer. No.

Question. Did you at any time hear—have any discussions with anybody on this subject?

Answer. No.

Question. Do you know—did you have any discussions with Ms. Deer prior to her visit to the Great Lakes area? It is my impression she actually did make a visit to the Wisconsin area at about the time of the rejection letters being issued. Did you have any discussions with Ms. Deer about the Hudson Dog Track matter and her trip to the Wisconsin area?

Answer. Not that I recall.

Question. Do you recall whether she ever discussed with you whether the discussion would be released prior to her visit?

Answer. No.

Question. Do you know whether Ada Deer knew before July 14th that the application would be rejected?

Answer. Whether she knew?

Question. Yes.

Answer. I don't know.

Question. Do you know Tom Collier?

Answer. Yes.

Question. Do you know John Duffy?

Answer. Yes.

Question. Have you had any subsequent business dealings with them since they left the Department of the Interior?

Answer. No.

Question. Do you know whether they represent any Native American tribes or interests?

Answer. Yes.

Question. Do you know who they represent?

Answer. Shakopees.

Question. Do they represent any other Native American tribes other than the Shakopees?

Answer. That's the only tribe that I have been officially notified that they represent. I don't believe there are any other tribes, but I don't know.

Question. How have you become aware that they represent the Shakopees?

Answer. They have sent in a letter.

Question. Were you—in the June, July 1995 time frame, were you aware that the Ho-Chunk tribe was negotiating to buy the Wisconsin Dells Greyhound Track?

Answer. Yes.

Question. And how were you aware of that?

Answer. The same way I was aware of this, through my staff.

Question. Do you know what happened with the negotiations?

Answer. I don't know. I haven't heard anything. I don't know.

Question. It's my understanding that they ultimately broke off negotiations to purchase the track. Do you know why they broke off negotiations to purchase the track?

Answer. No.

Question. Has anyone at the Department of the Interior ever discussed with you the political affiliation of any of the tribal leaders who were in support of the Hudson Dog Track application?

Answer. No.

Question. Correct me if I'm wrong, but I was under the impression you mentioned earlier that Gaiashkibos had political affiliations?

Answer. I said Ada told me that she had contributed to his campaign when he ran for Congress. When Ada recused herself, that was the reason she gave me.

Question. I thought you indicated that you thought he was a Republican?

Answer. No, not me.

Question. Okay. I'm sorry.

Answer. I don't know what he is.

Question. Okay. Have you ever discussed with anybody whether the Minnesota tribes opposed to the Hudson Dog Track application have been strong Democratic Party supporters?

Answer. No.

Question. Has anyone ever discussed with you in person or by any means the political contributions of the tribes opposed to the Hudson Dog Track application?

Answer. No.

Mr. WILSON. That's all the questions I have.

Mr. SADKIN. Could we just take one minute? I know you are trying to get out of here, but if we could just take one minute.

The WITNESS. Okay, sure.

EXAMINATION BY MR. SADKIN:

Question. Ms. Manuel, thank you very much for being here today. I know that you have many other responsibilities to attend to today, so I'll try to be as brief as possible. Just a couple of questions for you.

Just to summarize, the Hudson Dog Track application was denied because of substantial documented opposition to the proposal; is that correct?

Answer. Along with other—yes, that was one of the grounds for denying it, yes.

Question. And the tribes were asking for an off-site casino, not on their reservations; is that correct?

Answer. That's right.

Question. And this played into your determination, the distance from the tribes to the site?

Answer. That's right.

Question. And there were actually tribes located in the same geographic vicinity that would have been adversely affected had this casino been opened?

Answer. Yes.

Question. And the application was rejected by the gaming staff? It was a career, civil servants made the recommendation to the Assistant Secretary's office, so the decision was actually made by career civil servants?

Answer. That's right. I'm career, too, I'm not political.

Question. Not by political appointees?

Answer. That's right.

Question. And you said you have been with the Department for about 7 years?

Answer. Yes.

Question. And you indicated that you are in a career position, not a political position?

Answer. Yes.

Question. So you actually began service during the Bush Administration?

Answer. Yes.

Question. And how long have you been involved with gaming applications?

Answer. Since 1991.

Question. So you have seen a lot of gaming applications?

Answer. Yes.

Question. And you have also been involved with land into trust agreements?

Answer. Yes.

Question. You testified earlier that most, if not all, of those applications are actually approved by the local—the area BIA office; is that correct, or not approved?

Answer. Yes, that's right. If they're gaming applications, the decision to approve is made at the central office, but the approval recommendation comes from the area.

Question. And in most, if not all cases, the area office will recommend that the central office approve the application?

Answer. In every case that I have ever handled, the area has recommended approval.

Question. And you indicated that their role is an advocate, is generally an advocate for the tribes?

Answer. Yes.

Question. So why is it that the Washington office—let me rephrase, I'm sorry.

Does the Washington office always agree with the area BIA offices?

Answer. Hardly.

Question. So it's not uncommon for the Washington office either to deny a tribe's request or send it back to the tribes?

Answer. That's right. We do it quite frequently.

Question. And did this—did similar situations take place under Secretary Lujan when you were there?

Answer. Yes.

Question. Can you think of situations where an off-reservation land was not approved to be taken into trust during the Bush Administration?

Answer. The Omaha, Santee Sioux, I can't think of the other big one we had. We had another one. At least three that I personally worked on that—where it was not—

Question. So the Hudson decision was not inconsistent with previous decisions? Answer. Not at all.

Question. Okay. In April 1995, were you involved in a dialogue with Secretary Babbitt and the Wisconsin tribes?

Answer. Yes.

Question. And this was sort of a town meeting where the tribes were able to discuss issues with the Secretary?

Answer. That's right.

Question. And did this Hudson project come up?

Answer. Yes, it did.

Question. Is it correct that Secretary Babbitt did not take a position on the project during that dialogue?

Answer. That is correct.

Question. And after the meeting, did you ask Secretary Babbitt if he wanted you to brief him on the issue?

Answer. Yes, I asked him.

Question. And what was his response?

Answer. No. He said that was my, my responsibility.

Question. Were you ever contacted—I think you have answered this already, but let me just follow up. Were you ever contacted by the White House or the DNC about this project, the Hudson project?

Answer. Never.

Question. And at the time of the decision, did you feel like the White House or the DNC tried to improperly influence the outcome?

Answer. No.

Question. Do you think the decision was based on the record?

Answer. Yes.

Question. And you feel like your staff took all relevant considerations into account?

Answer. Yes.

Question. And you think that your staff did a competent job of handling this situation?

Answer. Yes, I do.

Question. And these were career civil servants?

Answer. Yes.

Question. And you agree with this decision?

Answer. Yes, I do.

Mr. SADKIN. I think that's all I have. Thank you.

Mr. WILSON. I have no further questions. Thank you very much for appearing here today.

The WITNESS. Thank you.

[Whereupon, at 12:45 p.m., the committee was adjourned.]

[The exhibits referred to follow:]

~~PLAN C /~~
No Casino Favoritism

To the Editor:

William Safire (column, Dec. 31) jumps to erroneous conclusions as to why the Interior Department denied the application by three Wisconsin tribes to establish a casino 85 to 188 miles from their reservation.

It was the right decision, made for the right reasons, and I have told the truth about it. This department does not force off-reservation casinos upon unwilling communities. City councils of the towns of Hudson and Troy, as well as three senators from both political parties, seven Minnesota members of Congress, the Republican Governor of Wisconsin and many others opposed the casino.

Mr. Safire opines that Harold M. Ickes "caused heat to be put on" me to deny the application. The facts, spread across a voluminous record, prove otherwise. I did not participate in the decision, and as I have said in sworn testimony, I have never spoken to Mr. Ickes — nor to anyone else at the White House or the Democratic National Committee — about this matter.

Mr. Safire falsely asserts that a "staff recommendation" approving the casino was changed for political reasons. In fact, the draft memorandum cites only the criteria to be considered in determining local opposition, not whether the casino should be approved. The decision to deny was based on the recommendation of the senior civil servant in the gaming office and supported by his staff. They testified they were unaware of any contributions by interested tribes or of any communications between the tribes and the White House or the DNC.

BRUCE BABBITT
 Secretary of Interior
 Washington, Jan. 2, 1998



Citation	Database	Mode
59 FR 22951	PRES	Page
94 WL 161120 (Pres.)		

Publication page references are not available for this document.)

Memorandum

Government-to-Government Relations With Native American Tribal Governments

April 29, 1994

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal Copr. (C) West 1997 No Claim to Orig. U.S. Govt. Works



5, FR 22951

PAGE 2

(Publication page references are not available for this document.)
 programs, in appropriate circumstances, to address specific or unique needs of
 tribal communities.

The head of each executive department and agency shall
 ensure that the department or agency's bureaus and components are fully aware
 of this memorandum, through publication or other means, and that they are in
 compliance with its requirements.

This memorandum is intended only to improve the internal management of the
 executive branch and is not intended to, and does not, create any right to
 administrative or judicial review, or any other right or benefit or trust
 responsibility, substantive or procedural, enforceable by a party against the
 United States, its agencies or instrumentalities, its officers or employees, or
 any other person.

The Director of the Office of Management and Budget is authorized and directed
 to publish this memorandum in the Federal Register.

WILLIAM CLINTON
 THE WHITE HOUSE,
 Washington, April 29, 1994.

59 FR 22951, 1994 WL 163120 (Pres.)
 END OF DOCUMENT

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Fax Message From
Congressman

2185 Rayburn House Office Building
Washington, D.C. 20515-4903

Steve Gunderson

Third Congressional District, Wisconsin

cc: *George Sklar 10/15/95*
Don

TO: HEATHER Sibley
ASSISTANT TO THE COUNSELOR

FAX NUMBER: _____ PHONE NUMBER _____

FROM: STEVE GUNDERSON DAVE GUNDERSEN
FRAN MCNAUGHT JOAN JACKSON
X TIM BARTL KEVEN KENNEDY
JOHN FRANK TED REHARBER
JANET FRENE SCOTT SMITH
INTERM SCOTT STAFFORD

*file:
Dog pack*

DATE: 5/1/95 # PAGES 4 (INCLUDING COVER SHEET)

COMMENTS: Comment Letter: Hudson Fee-to-Test
Acquisition.

This was delivered to 7229 @ 12:15 5/1



Antigo Silts Loam



02874

STEVE GUNDERSON
3rd District, Wisconsin

AGRICULTURE COMMITTEE
ECONOMIC AND EDUCATIONAL
OPPORTUNITIES COMMITTEE



Congress of the United States
House of Representatives
Washington, DC 20515-4903

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April 28, 1995

The Honorable Bruce Babbitt
Secretary
Department of Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Secretary Babbitt:

I am writing on behalf of my constituents to express my opposition to the fee to trust acquisition of the St. Croix Meadows greyhound track by the Red Cliff, Mole Lake, and Lac Courte Oreilles bands of the Chippewa Tribe pending before the Bureau of Indian Affairs. As you know, the track is located in Hudson, Wisconsin, in the western part of my district.

The debate over adding casino gambling at the dog track has inflamed passions of Hudson residents for several years and has been a prominent issue in several local elections. Until now, I have remained neutral, in part because I believed that the residents of St. Croix county should be allowed to develop their own opinions without interference from Washington. I also remained neutral because I was unclear whether the Indian Gaming Regulatory Act (IGRA) permitted my input. However, since your office has informed me that I may comment, I have considered the historical perspectives of the debate, the national significance of this decision, and the views of my constituents. I have concluded that the most prudent course would be for the Department to reject casino gambling at St. Croix Meadows.

I oppose the expansion of gaming at the Hudson dog track because it would set a national precedent for off-reservation casino gambling facilities. Section 20(b) of the IGRA provides that the Secretary of the Interior, with the governor's approval, may acquire land outside of an established reservation for gaming purposes if the Secretary determines that the acquisition is in the tribe's best interest and would not be detrimental to the surrounding community. According to your office, since Congress passed the IGRA in 1988, the Secretary of Interior has never approved the acquisition of off-reservation land to be used for casino gambling. This appears to indicate that the section was intended to apply only in exceptional cases.

02875

The Honorable Bruce Babbitt
 April 28, 1995
 Page 2

Congress passed the IGRA in large part to promote Native American economic development through gaming. At the same time, the Act sought to protect against the abuses of a burgeoning, but unregulated gaming industry. Most tribes that have developed gaming on their reservations have succeeded in significantly improving the economic conditions of their members.

Under existing compacts with the State of Wisconsin, each of the three bands applying to develop a casino in Hudson is allowed to build two casinos with blackjack facilities on its reservation. Each presently has one casino with blackjack facilities on its reservation. To increase economic opportunities for its members, each tribe may build an additional facility with blackjack without treading into the precedent-setting waters of off-reservation casinos. If your office approved the acquisition of the dog track, a national precedent would be set to encourage the development of additional off-reservation facilities when on-reservation development options are still available. For this reason, Hudson is not the place to break new ground.

In addition to setting a new precedent, proceeding with the acquisition would be detrimental to the Hudson area by further eroding relations among residents and limiting opportunities for economic development. Area residents and their local representatives oppose casino gambling. The passage of legislation allowing the dog track created many deep wounds in the city. In 1991, when a casino at the dog track was first debated, the City of Hudson recalled its mayor because he supported gaming. A year later, the City Council adopted a resolution opposing Indian gaming at the dog track. In February, the Council again voted to reject a casino.

Voters have increasingly opposed Indian gaming at the dog track. In 1992, the City of Hudson held a referendum which asked whether residents supported the transfer of the land to an Indian tribe if unspecified financial conditions were met. The results were 1,352 voters in support of the transfer and 1,288 against. However, in a 1993 statewide referendum which asked whether residents wanted to expand Indian gaming in Wisconsin, 65% of St. Croix County residents voted against expansion. In the adjoining Troy township, from which land was annexed for the track, 85% of the residents voted against expansion.

In sum, it is my conclusion that allowing a casino at the St. Croix Meadows facility would set an expansive national precedent for off-reservation gaming where none is needed. The approval would have detrimental effects on the residents by creating further divisiveness in a city where civic harmony has already been severely damaged. Further, the recent votes provide ample statistical proof of public opinion. For these reasons, I oppose the expansion of casino gambling to the St. Croix Meadows track.

02676

The only land transaction approved since enactment of IGRA for an off-reservation Class II gaming facility was for the Forest County Potawatomi Tribe. The property is located in Milwaukee, Wisconsin and the transaction was completed in 1990 prior to the establishment of the office of the Indian Gaming Management Staff and the established items to ascertain that the transaction meets the two-part determination required in Section 20.

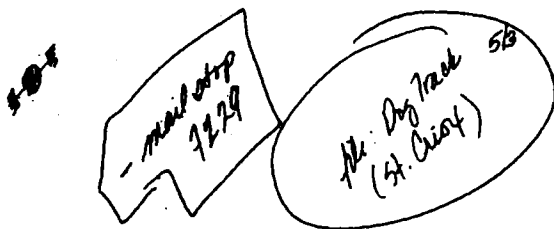
Two acquisitions were approved for lands located off-former-recognized reservations in the State of Oklahoma: The Cherokee Nation of Oklahoma acquired two parcels: one in West Siloam Springs, OK for a total of 7.808 acres (approved by Central Office: 01/18/94 and the second in Rogers County, OK for a total of 15.66 acres (approved by Central Office: 09/24/93); both are for Class II gaming facilities.

Two acquisitions were approved for land "contiguous to the reservation" for two tribes in Louisiana: Tunica-Biloxi Tribe acquired 21.054 acres in Avoyelles Parish, LA for a Class III gaming facility (approved by Central Office: 11/15/93); and Coushatta Tribe acquired 531 acres in Allen Parish, LA for a Class III gaming facility (approved by Central Office: 09/30/94).

One land acquisition was approved for a tribe with no reservation on enactment date of the IGRA and the land was not in Oklahoma: Sisseton-Wahpeton Sioux Tribe of Lake Traverse Reservation acquired 143.13 acres in Richland County, North Dakota for a Class III gaming facility (approved by Central Office: 09/30/94).

Three transactions have been prepared for off-reservation acquisitions for Class III gaming facilities in the States of Oregon, Louisiana and Michigan. None received the concurrence of the Governor; consequently, none of the proposals were taken in trust.

*Get it to him Monday
5/1*



The Honorable Bruce Babbitt
April 28, 1995
Page 3

I would appreciate a status report on the acquisition at your earliest convenience.
Thank you for your consideration.

Best regards,

A handwritten signature in black ink, appearing to read "Steve Gunderson". The signature is fluid and cursive, with the first name "Steve" written in a larger, more prominent script than the last name "Gunderson".

Steve Gunderson
Member of Congress

SG:tb

02877



Tribal Operations

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
MINNEAPOLIS AREA OFFICE
331 SOUTH 19TH AVENUE
MINNEAPOLIS, MINNESOTA 55401-1241



JUL 11 1994

MEMORANDUM

TO: Assistant Secretary - Indian Affairs

FROM: Office of the Area Director

SUBJECT: Request for Off-Reservation Gaming for Land in Hudson, Wisconsin

On March 4, 1994, the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes"), together, pursuant to Section 2719(b) of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988), filed an application with the Minneapolis Area Director requesting that the United States take a certain parcel of real property located in Hudson, Wisconsin, into trust for the benefit of the Tribes for gaming purposes. The Tribes do not currently own the property, but they have an agreement to purchase the land if and when the Secretary of the Interior makes the findings necessary under Section 2719, the Governor concurs in the Secretary's findings, the steps necessary to place the land into trust have been completed, the National Indian Gaming Commission approves the management contract and collateral agreements and the Tribes have amended their gaming compacts of 1991 to permit the operation of pari-mutuel greyhound racing.

This memorandum outlines the Minneapolis Area Office's review and analysis of the Tribe's application and transmits; (1) the Area Director's Findings and Recommendations, (2) the comments of the Field Solicitor, Twin Cities, and (3) the Documentary Support required for the Secretary's Determination concerning the request for off-reservation gaming on proposed Trust Acquisition of the Tribes.

I. APPLICATION INFORMATION

A. Sokaogon Tribe: The Sokaogon Chippewa Community of Wisconsin occupy a small reservation in Forest County, Wisconsin with the central community in Mole Lake. There

1

EOP 064500



are 1,528 persons enrolled in the Tribe. 512 members live on or near the reservation. According to figures provided by the Tribe, 42% are unemployed and actively seeking employment.

The Sokaogon Chippewa Community Tribal Council is authorized by Article VII, Section (e), to manage all economic affairs and enterprises of the Community. The Sokaogon Chippewa Community Tribal Council included two resolutions as part of the Tribes application package. Resolution No. 9-11A-93 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 2-4A-94 approved the St. Croix Meadows-Joint Operating Agreement and authorized the Tribal Chairman to sign the agreement.

B. Lac Courte Oreilles Tribe: The Lac Courte Oreilles Band of Lake Superior Chippewa had a reported enrollment of 5,431 people in 1991. In 1991, 1,923 of these people lived on the reservation and another 1,126 lived within 150 miles of the reservation.

The Lac Courte Oreilles Tribal Governing Board is empowered by Article V, Section 1(f) of the Lac Courte Oreilles Constitution to purchase lands within or without the boundary of the Tribe's reservation. The Tribal Governing Board is empowered by Article V, section 1(h) to engage in any business that will further the social or economic well-being of members of the Band. The Lac Courte Oreilles Governing Board submitted three resolutions as part of the Tribes application package. Resolution No. 93-82 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 94-08 approved the Joint Operating Agreement and directed the Tribal Chairman to execute the agreement on behalf of the Lac Courte Oreilles Band of Lake Superior Chippewa. Resolution 94-09 created the Lac Courte Oreilles Economic Development Commission to act on behalf of Lac Courte Oreilles.

C. Red Cliff Tribe: The Red Cliff Band of Lake Superior Chippewa occupy a small reservation in Bayfield County, Wisconsin, on the shores of Lake Superior. There are 3,180 persons enrolled in the band. 1,651 members live on or near the reservation.

The Red Cliff Tribal Council is authorized by the Red Cliff Constitution Article VI, Section 1(e) to manage all economic affairs and enterprises of the Tribe. The Red Cliff Tribal Council included two resolutions as part of the Tribes application package. Resolution 9/23/93C requests the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust. Resolution 2/7/94A authorized the Tribal Chairperson to sign the Joint Operating Agreement on behalf of the Red Cliff Band of Lake Superior Chippewa and also authorized the Chairperson to take such other actions necessary to effectuate the agreement.

These Tribes continue to have high rates of unemployment and poverty in spite of having developed gaming facilities on their reservations. We agree with the Tribes determination that this is true largely because they are located at great distances away from urban markets.

Each of these Tribes also have relatively small populations and land holdings. The Hudson location will provide the tribes with access to an urban market for the gaming facility. However, since it is unlikely that many of the residents of these three communities will chose to relocate to be employed at this location, the benefits which will accrue to each of these communities will come not from direct employment in the gaming facility, but, rather, from employment and the goods and services which would be generated by the spending of each community's share of the net income.

The average amount estimated to be received by each of the three Tribes over the next five years from the operation of the Hudson Gaming Facility is approximately \$10 million per year. This money would be used by the Tribes to improve health care facilities on their reservations, purchase land, improve housing facilities, improve community and elderly programs, improve educational facilities and as educational grants, and to invest in economic development in the communities.

1. Description of Land:

The Tribes have requested that land located in the City of Hudson, County of St. Croix and State of Wisconsin, be taken into trust pursuant to 25 C.F.R. Parts 151 and 25 U.S.C. § 465 and § 2719. The land is currently owned by Croixland Properties Limited Partnership.

This request is for a parcel of land located in the fractional NE¼ of the NE¼, and SE¼ of the NE¼, Section 6, T28N, R19W, City of Hudson, Saint Croix County, Wisconsin, described as follows:

The fractional NE¼ of the NE¼ of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional NE¼ of the NE¼ of said Section 6.

ALSO, that part of the SE¼ of the NE¼ of said Section 6 described as follows:
Commencing at the NE corner of said Section 6: thence S02°49'01"W 1,891.74 feet along the East line of the fractional NE¼ of said Section 6 to the NE corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the SE¼ of the NE¼ of said Section 6; thence N02°48'30"E along the west line of said SE¼ of the NE¼ to the NW corner thereof; thence Easierly along the North line of said SE¼ of the NE¼ to the NE corner thereof; thence S02°49'01"W, along the East line of said SE¼ of the NE¼ to the point of beginning.

The properties listed above encompass an area of approximately 55.82 acres currently consisting of the St. Croix Meadows Greyhound Racing Facility. The site is served by all necessary utilities and a highway system which includes Interstate Highway 94.

2. Third Parties:

The Tribes have entered into a Joint Operating Agreement with Galaxy Gaming and Racing Limited Partnership, an affiliate of Croixland, in order to provide management of the proposed gaming facility. We have informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Association. The National Indian Gaming Commission concurred in our determination and the Tribes have requested their approval.

II. GOVERNMENTAL ACTIONS REQUIRED

The process of taking Off-Reservation land into trust requires a tribal applicant to meet the requirements of 25 C.F.R. Part 151 - Land Acquisition, and Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988). Section 2719(b)(1)(A) requires the following two part determination:

"The Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's Determination;"

This report does not contain information written specifically to meet the requirements of 25 C.F.R. Part 151, Land Acquisition. This report only outlines the Minneapolis Area Office's review and analysis of the Tribe's proposal to meet the two part determination required by the Indian Gaming Regulatory Act. 25 C.F.R. Part 151 requires specific actions within real estate services that exceeds Section 2719 action under the Indian Gaming Regulatory Act. If and when it becomes necessary, the requirements of 25 C.F.R. Part 151 will be addressed by the Area Office in a separate document.

The Indian Gaming Regulatory Act has several requirements that have been met by the Tribes; first, all three Tribes have successfully negotiated Class III Gaming Compacts with the State of Wisconsin as required by Section 2710(d)(1)(C) of the Indian Gaming Regulatory Act and the Secretary of Interior published the Approval Notice of the Gaming Compacts in the Federal Register; second, in accordance with 2710(d)(1)(A), each Tribe has adopted tribal gaming ordinances that have been approved by the Chairman of the National Indian Gaming Commission.

II. CONSULTATION PROCESS

The Bureau of Indian Affairs consultations with the City of Hudson, Local Officials, and Tribal Officials are described in detail in the Recommended Findings of Fact and

Conclusions. As the Recommended Findings of Fact and Conclusions indicate, the Tribes' application has received mixed support from the Community and nearby Tribes.

IV. DOCUMENTARY RECORD

The Minneapolis Area Office has prepared four volumes of documentary support required for the Secretary's determination. The documentary support consists of documents the Tribes have submitted in support of their application and documents the Area Office has compiled during the course of the review and analysis of this application. The documentary record contains a complete index of documents.

Volume I contains proprietary information that is privileged commercial and financial information, which is confidential and exempt from disclosure pursuant to 5 U.S.C. 552 (b)4.

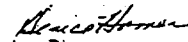
V. RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the documentary support that was prepared during the course of the review and analysis of the Tribes' Application, the Area Office has prepared the attached Recommended Findings of Fact and Conclusions.

Based upon the Tribes' application, the documentary support and the consultations between the Great Lakes Agency Superintendent, the City of Hudson, St. Croix County, and other federally acknowledged Indian Tribes located in Wisconsin and Minnesota, the Recommended Findings of Fact and Conclusions conclude that allowing gaming on the proposed trust property is in the best interests of the Tribe and its members and would not be detrimental to the surrounding community.

VI. RECOMMENDATION

Because the establishment of a gaming facility on the proposed trust land is in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, I recommend that the Secretary determine that the proposed trust property be acquired by the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes for Gaming purposes.


Area Director

Attachments

MINNEAPOLIS AREA OFFICE'S
RECOMMENDED FINDINGS OF
FACT
AND
CONCLUSIONS

November 15, 1994

EOP 064505

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RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

INTRODUCTION:

The Sokaogon Chippewa Community of Wisconsin, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (Collectively referred to as the "Tribes") have entered into an agreement with the current owners (Croixland Properties Limited Partnership or "Croixland") of the St. Croix Meadow Greyhound Park located in the City of Hudson, Wisconsin, to purchase the assets of the pari-mutual dog track. The Tribes have requested that the land currently comprising St. Croix Meadows, as well as land immediately surrounding the dog track (totaling approximately 55 acres), be placed into trust. The stated purpose of the acquisition is to begin Class III gaming at the facility with the introduction of 1,500 - 2,000 slot machines and 30 - 40 blackjack tables.

Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988) states, in part, that lands can be acquired for gaming only if "the Secretary, after consultation with the Indian Tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a Gaming Establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community..." 25 U.S.C. § 2719 (b) (1) (A). The following is the Minneapolis Area Office's analysis and recommendations of the Tribes application under this section.

I. BEST INTEREST OF THE TRIBES

A. GROSS AND NET INCOME TO THE TRIBES:

Two separate market studies were prepared regarding this proposal. One by Arthur Andersen & Co. (AA) (Tab 3)¹ which used the "comparative market analysis approach" to estimate the Hudson market potential, and one by James M. Murray, PhD. (Tab 4) which used the gravity model and Reilly's Law of Retail Gravitation to establish the sphere of influence of the Hudson facility both currently and as projected. Although the specific findings of the two reports do differ significantly in some respects, we will incorporate both reports into our analysis.

The AA Study estimates the total market gaming revenues in the primary market of Minneapolis/St. Paul to be between \$550 - \$630

¹ Unless otherwise stated, the tabs are located in Volume I.

million, with the proposed Hudson Casino share projected to be \$80 million (excluding the dog track) (Tab 3, pages 21 & 22). AA projects Total Revenues for the first year to be \$88,367,000. The Net Income is projected to be \$30,910,000 in the first year of operation. Pursuant to the Joint Operating Agreement (Tab 7D, page 8) each tribe would receive 25% of the net revenue. Thus, under this study, each tribe is projected to receive \$7,727,000 in the first year of operation and \$11,506,000 by the fifth year (V-1, Tab 3, page 30).

Dr. Murphy estimates the total gaming revenues in the primary market to be currently at \$406,906,108 a year (Tab 4, page 15). He estimates the proposed Hudson Casino take (including income from the dog track) would be \$104.1 million in the first year of operation and \$131.4 million by the fifth year (Tab 4, page 18). He projects Net Revenues to be \$31.1 million in the first year and 48.8 million by the fifth year (Tab 5, page 1). Dr. Murphy did not provide an estimate of the total market gaming revenues. However, we note that his estimate of total revenues of \$511,124,739 (Tab 4, page 15) is consistent with the estimate made by the Arthur Andersen study.

The two reports differ notably in amount of gross income projected and the total amount of expenses expected to be incurred by the Hudson Venture in the first year (See Table 1 of this report). As a result, we combined the two reports to calculate a best case scenario and a worst case scenario.

Dr. Murphy does not give a breakdown of the expected expenses since his report focuses more on the overall impact to the Tribes and surrounding community from the spending of the net proceeds. Nevertheless, we feel it is important to include this information since it substantiates the Tribes position.

If you combine Dr. Murphy's total expenses (\$73 million) with AA's estimated Total Revenues (\$88,367,000), the Tribes would net approximately \$3.84 million each (\$5,367,00 multiplied by 25%). This number represents the worst case scenario under a combination of the two studies.

The best case scenario under a combination of the two studies is a Net Revenue of approximately \$46.6 million (\$104.10 million in Gross Revenue under Dr. Murphy's study minus \$57.45 million in total expenses in AA's study) to be divided equally among the three Tribes and current owner. Under this scenario each Tribe would receive \$11.65 million in the first year of operation.

We find that due to the sheer size of the market of the urban area, the Tribes would enjoy a financial benefit well beyond any financial benefits generated from reservation located casinos. Also, an urban location would be more likely to produce a relatively stable annual cash flow for the Tribes. It would also

Table 1

COMPARISON OF THE MARKET STUDIES FOR THE FIRST YEAR OF OPERATION

<u>Revenues:</u>	Arthur Andersen:	Dr. James Murray:
Casino	\$70,000,000	
Dog Track	11,367,000	
Food & Beverage	7,000,000	
<u>Total Gross Revenues:</u>	<u>88,367,000</u>	<u>104,100,000</u>
<u>Expenses:</u>		
Casino	20,300,000	
Dog Track	7,131,000	
Food & Beverage	5,600,000	
G&A, Marketing, Sec, Property	17,673,000	
Operating Expenses		60,000,000
Depreciation	3,111,000	
Interest	3,641,000	
Debt Service per Year		13,000,000
<u>Total Expenses:</u>	<u>57,456,000</u>	<u>73,000,000</u>
PROJECTED NET INCOME:	<u>\$30,911,000</u>	<u>\$31,100,000</u>

provide each Tribe a source of income which it can use to further Self-Determination and economic independence.

B. PROJECTIONS OF MANAGEMENT AND TRIBAL EXPENSES:

For the first five to seven years the Hudson Venture will be operated by the three Tribal Economic Development Commissions and Galaxy Gaming pursuant to the terms of the Joint Operating Agreement (Tab 7D, page 11, § 3.1). We informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Commission. The National Indian Gaming Commission concurred verbally in our determination. The Tribes have submitted the Joint Operating Agreement and the collateral agreements to NIGC for approval.

Under the Joint Operating Agreement, the "Business Board" will have general oversight and authority over the operation. It will be composed of eight persons: two Galaxy Gaming representatives and two representatives from each of the three Tribes (Tab 7D, page 4, § 2.7). The primary management officials include any person with the authority to hire and fire employees and any person with the authority to set working policy (Tab 7D, page 10, § 2.31). The Business Board will unanimously select four of the primary management officials. They include the Chief Executive Officer, General Manager, Chief Financial Officer and the Human Resource Director Id.

The Chief Executive Officer will be a member of the Business Board. This position will be unanimously selected by the Business Board and will be granted the power and authority to oversee the daily business affairs and operations of the Enterprise (Tab 7D, page 5, § 2.9). The CEO is required to report to the Business Board and under the Joint Operating Agreement, will not be able to undermine the Boards authority. Thus, even though the CEO must be a Galaxy Gaming Representative as long as the Financing Debt remains outstanding, the three Tribes will have substantial control of the operation (Tab 7D, page 16, § 5.1).

Each Tribe will also select their own Tribal Inspector. The three Tribal Inspectors will have full access to all aspects of the Enterprise (Tab 7D, page 20, § 5.6.3).

Under the Joint Operating Agreement, each Tribe is guaranteed a minimum monthly payment of \$66,667.67 from the net revenues. Galaxy Gaming will then receive the next \$66,667.67 for that month. Anything over \$266,667.67 for any particular month will be distributed equally between the three Tribes and Galaxy Gaming (Tab 7D, § 2.26 and § 7.1). Galaxy will be entitled to a 25% share in the net revenues for the first seven years of operation with the Tribes maintaining the authority to "buy-out" all of Galaxy's rights in the agreement after the completion of the

fifth full year of the operation (Tab 7D, page 41, § 24).

The Joint Operating Agreement requires Galaxy to loan² the Enterprise the amount necessary to fully pay the Tribe for any yearly shortfall of the guaranteed payments (Tab 7D, page 8, § 2.26). However, the market studies indicate that loans will not be necessary to fulfill this minimum monthly obligation.

1. Assumed Liabilities and Nonrecourse Liability:

The Economic Development Commissions (EDCs) of the Tribes have agreed to purchase the St. Croix Meadows real property for \$10.00. The assets necessary to run the operation (the building and improvements constructed on the land) will also be transferred to the EDCs subject to certain obligations of the seller. Under the Asset Purchase Agreement, the obligations will be paid as operating expenses and are referred to as the "Nonrecourse Liability" (Tab 7, pages 6 & 7). They include the debt owed to First Union National Bank of Florida (principal of \$37,900,000 plus certain accrued interest arrearage which has been or will be capitalized) and the debt owed to the First National Bank of Hudson (Principal in the amount of \$1,230,000). Although the agreement provides no limitation on the amount of interest that the Tribes will eventually pay, it does state that "in no event shall the aggregate principal amount of the Nonrecourse Liability exceed \$39,200,000" (Tab 7, page 7).

The EDCs have also agreed to take the assets subject to certain "Assumed Liabilities" (Tab 7, pages 7 & 8). They include the following:

- (a) Real property lease obligations;
- (b) Personal property lease obligations;
- (c) Obligations under contracts and licenses;
- (d) Deposits held by seller under the real property and personal property leases.

The Tribes have not provided the dollar amount of the obligations these assumed liabilities will total. However, we do note the Tribes have estimated a yearly total expenditure in both market studies which includes these expenses.

Croixland will continue to own and pay taxes only on 6.96 acres of land next to the Hudson proposal (Tab 7B). The remaining land will be transferred to the Land Venture and leased to the Tribe's EDCs (Tab 7E). The EDCs will pay all taxes, assessments, water and sewer rents, rates and charges, charges for public utilities,

² The interest rate on this loan is equal to the prime commercial lending rate of First Union plus 1% (Tab 7D, page 9, § 2.27).

and maintenance of the Parking Lot Land (Tab 7E, page 7, Article 4).

2. Joint Venture Agreement of Meadows Parking Lot Joint Venture:

Croixland and the Tribes have also agreed to form a joint venture partnership (Tab 7F). It will be called the Meadows Parking Lot Joint Venture and is not scheduled to terminate until December 31, 2045 (Tab 7F, page 6, Article 3). The purpose of this agreement is to transfer ownership of the parking lot to the partnership. To accomplish this, Croixland has agreed to sell the parking lot land to the Joint Venture at closing (Tab 7, page 27, § 9.03(g)). The property shall be deemed to be owned by the Venture as an entity and no Venturer will own the parking lot individually (Tab 7F, page 6, Article 2).

Under the Asset Purchase Agreement, Croixland will transfer the parking lot land to the venture for \$10.00 and the portion of the First Union Debt equal to the fair market value of the parking lot land (Tab 7, page 11, Article III). The venture will then lease the parking lot to the Tribe's EDCs. Thus, the Meadows Parking Lot Joint Venture will be the landlord and the Tribal EDCs will be the tenants under terms of the Parking Lot Lease (Tab 7E). Rent payable by the EDCs under the Net Lease will initially be "a sum equal to 110 percent of the aggregate of the monthly debt service payable over the initial Lease Year with respect to the portion of the... (First Union Debt) allocable to the Demised Premises" (Tab 7E, page 4, Article 3). The annual base rent after the initial lease year will be determined by multiplying the annual base rent for the preceding year by a fraction (adjustment level divided by the base level) Id. The lease is to terminate in the year 2018 (Tab 7E, page 2).

We have advised the Tribes of the troublesome aspects of this arrangement. Specifically, we informed the Tribes that the ownership arrangement does not appear to be beneficial to the Tribes and seems likely to cause friction in the future. However, it is our determination that this arrangement, by itself, is not a basis to reject the application.

3. Agreement for Government Services:

The three Tribes, City of Hudson and the County of St. Croix entered into an Agreement for Government Services on April 18, 1994 (Tab 9). Under this agreement, the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other services that are under the control of the City or County or are

customarily provided to other commercial properties within the City or County (Tab 9, page 2).

The Tribes have agreed to initially pay the City and County \$1,150,000 for the services Id. The payments will be paid on a semi-annual basis beginning on January 31, 1995. The first payment will be pro-rated from the date the land is actually accepted into trust.

Beginning in 1999, the Tribes will begin paying the City and County an amount equal to the allocable amount for the preceding year (\$1,150,000 in 1998 with no adjustments) multiplied by 1.05 (Tab 9, page 3). The following table provides a comparison of the amount the Tribes will initially pay the city and county and the future value of \$1,150,000:

<u>ALLOCABLE AMOUNT PROJECTIONS ASSUMING NO ADJUSTMENT</u>				
<u>Year:</u>	<u>Actual Amount Owed:</u>		<u>Future Value of 1,150,000:¹</u>	
			<u>A</u>	<u>B</u>
1999	1,207,500		1,240,850	1,195,425
2000	1,267,875		1,338,877	1,242,644
2001	1,331,269		1,444,649	1,291,729
2002	1,397,832		1,558,776	1,342,752
2003	1,467,724		1,681,919	1,395,791
2004	1,541,110		1,814,791	1,450,925
2005	1,618,166		1,958,159	1,508,236
2006	1,699,074		2,112,854	1,567,811
2007	1,784,028		2,279,769	1,629,740
2008	1,873,229		2,459,871	1,694,115
10 YEAR TOTALS	<u>15,187,807</u>		<u>17,890,515</u>	<u>14,319,168</u>
2025	4,293,477		8,959,357	3,273,099

As the above chart indicates, the yearly 1.05 increase in the payment by the Tribes to the City and County for services is reasonable. The Office of the Field Solicitor, Twin Cities, has also indicated the Government Services Agreement is an agreement in which the Tribes may participate (Volume II, Tab 2, page 3). Thus, we find this agreement acceptable.

The Agreement for Government Services states that "any real estate taxes and assessments and personal property taxes paid with respect to the Non-Trust Property with respect to any calendar year shall be treated as a credit against the payment by the Tribes of the Allocable Amount (as adjusted) for such

¹ Formula Used to determine the future value:
For Column A: Annual Interest Rate is 7.9% for 1 period a year.
For Column B: Annual Interest Rate is 7.9% for 2 periods a year.

calendar year" (Tab 9, page 4). However, this does not apply to taxes paid by Croixland for improvements or special assessments Id. The Tribes will also receive a total reimbursement from Galaxy Gaming and Racing Limited Partnership in the amount of \$297,500 in years 1995, 1996 and 1997 (Tab 9, page 18). This amount represents the difference in the Tribes proposal and the City's proposal for payment of government services.

The Agreement for Government Services states that the Tribes will cause Croixland to pay the delinquent and overdue real estate taxes and assessments and personal property taxes due through 1993 (Tab 9, page 4). Thus, all encumbrances on the land will be removed prior to placing the land into trust. However, to verify this, we have requested the Tribes submit title evidence prior to beginning the 25 C.F.R. Part 151 process. The Tribes responded by providing a copy of the Title Insurance Commitment (Tab 10). Also see the Tribe's letter to the Minneapolis Area Office dated October 14, 1994 (Volume II, Tab 4).

4. Ground Lease:

This lease agreement is between Croixland Properties Limited Partnership and the Tribe's EDCs. The Asset Purchase Agreement provides that the land will be leased to the Tribe's EDCs at the same time the conveyance of the Assets⁴ takes place and immediately prior to the conveyance of the land (Tab 7, page 3 § 1.01(a)). The Asset Purchase Agreement then calls for the land and the Croixland's interest in the Ground Lease to be conveyed to the Tribes Id. Thus, the Tribes will become the landlord and the EDC's the tenants under the terms of the Ground Lease.

Initially, we had concern over the language in Article I, Section 1.03(d) of the Ground Lease and Article II, Section 2.01 of Asset Purchase Agreement since it appeared as if these agreements required the United States to become the landlord and a party to the Ground Lease. We informed the Tribes that this type of arrangement is not acceptable. As a result, the Tribes and Croixland amended the requisite sections to make clear that the United States, as trustee for the Tribes, will not be assigned or conveyed the landlord's interest in the Ground Lease or have any obligations or responsibilities under its terms (Tab 7, Amendments). We are satisfied that the Ground Lease is now only between the Tribes (as the assignee of the Seller), as landlord, and the EDCs, as tenant.

The Ground Lease is for 25 years and may be extended by the EDCs for an additional 25 year term (Tab 7C, page 1). All rent is payable directly to the Tribes. The EDCs will be required to pay

⁴ We note that the land is not defined as an "Asset" in any of the agreements.

rent of \$12 a year and all costs expenses and other payments which the EDCs assume or agree to pay. The EDCs will also be required to pay to the Tribes rent from the net revenue pursuant to the terms of the Joint Operating Agreement. The EDCs also agree to pay all real estate taxes, assessments, water and sewer rents, and other governmental charges imposed against the facility, or imposed against any personal property or any Rent or Additional Rent (Tab 7C, page 4, Article 3).

The tenant may construct any building on the land after obtaining approval of the Landlord (Tab 7C, Article 4). The tenant is obligated to provide indemnification for any work on the facility, any use, non-use, possession, occupation, condition, operation, maintenance or management of the facility, any negligence on the part of the Tenant or their agents, contractors, employees, invitee or tenants, and any injury or death to any person or damage to or loss of property occurring in, on or about the facility. Galaxy Gaming is not required to provide any indemnification. The tenant is also required to provide insurance, Galaxy is not required to pay for any of it (Tab 7C, Articles 7 & 8).

5. Activities Loan:

The Joint Operating Agreement is between the Tribe's EDCs and Galaxy Gaming and Racing Limited Partnership. This agreement also provides that Galaxy Gaming will assist the Business Board in securing financing to the EDCs for the funds necessary to renovate and remodel the existing dog track facility and to begin operation. Galaxy guarantees the obtainment of this financing (Tab 7D, page 2, § 1.6).

To fund renovation of the third floor of the existing building, an "Activities Loan" (Tab 7D, page 3, § 2.1) will be made by a third-party lender to the EDCs and Galaxy Gaming and Racing Limited Partnership in an amount of up to \$10,000,000 (any amount over \$5,000,000 must be approved unanimously by the Business Board). This money will be used for costs, expenses and expenditures set forth in the Renovation Budget, for initial working capital as needed and for payments of expenditures necessary to "protect and keep perfected the Activities Loan."

C. BASIS FOR PROJECTIONS AND COMPARISONS:

The Proposed facility will be located at 2200 Carmichael Road in Hudson, Wisconsin. The site is approximately one mile south of the Carmichael Road/Interstate 94 interchange in a rural area in the southeast corner of Hudson. The existing grandstand building of the greyhound track has three floors with over 160,000 square feet of space. The property includes parking for approximately 4,000 vehicles.

The Las Vegas office of Arthur Andersen & Co., an international "Big 6" accounting firm performed a market demand and feasibility study. Dr. James M. Murray, PhD. performed an analysis of the market for the addition of casino games to the existing greyhound track and an analysis of the economic impact of the proposed Venture on the Tribal Reservations and the communities where the proposed facility would be located. We relied heavily on both studies to reach our recommendations and findings.

Our review of the market studies indicates that there was a substantial amount of time involved in accumulating the data in the studies. We find the sources of data to be reliable. The Arthur Andersen & Co. study contains pro forma financials which were reviewed and found to be acceptable by the Minneapolis Area Branch of Credit (Volume II, Tab 5).

D. PROJECTED TRIBAL EMPLOYMENT:

The Tribes have stated they plan to "actively recruit Native American candidates for positions at all levels." For employees at the Hudson Venture, a hiring preference will be given in the following manner: first, to members of the three Tribes and their spouses and children, second, to other Tribal members and third, to local residents from communities surrounding Hudson (Tab 7D, page 22).

Each of the three Tribes have stated that due to the location of their reservations, they do not anticipate many Tribal members who are currently living on the reservations to move to Hudson for employment in the casino (Tab 1, page 4). Since the Lac Courte Oreilles Reservation is located approximately 117 road miles from Hudson, the Red Cliff Reservation is located approximately 221 road miles away and the Sokaogon Reservation is located approximately 290 road miles away from Hudson, we have no reason to dispute the Band's assessment. The Tribes do anticipate 10 - 20 percent of the 1,600 positions at the Hudson Venture to be filled by Tribal members already living near the Hudson, Wisconsin area (Tab 1, page 5).

The three Tribes expect to receive an average of \$10 million annually over the next five years as their share of the profits (Tab 5, S-1). They have identified areas of "high priority" for which this money will be spent at each reservation. We have advised each Tribe that if they are going to provide a per capita payment from their gaming proceed, a Revenue Allocation Plan must be submitted and approved under the December 21, 1992, Guidelines

¹ Activities Identified as High Priorities by all three Bands: improved health care facilities, educational facilities and grants, housing, economic and community development, programs for the elderly, land purchases and community programs.

to Govern the Review and Approval of Per Capita Distribution Plans and Section 2710 of the Indian Gaming Regulatory Act. Currently, only the Sokaogon Community has indicated that per capita payments will be made. The Sokaogon Community did submit a Revenue Allocation Plan. We returned the plan to the Community and recommended minor changes. We expect to approve the plan when these changes are made.

Each Band anticipates increased employment on the reservations due directly to the spending of their share of the net income generated by the Hudson Venture. In his analysis of the economic impact of the proposed Hudson Gaming Facility on the three Tribes, Dr. Murray estimates the creation of 150 new jobs on each reservation over the next five years (Tab 5, S-1). Although the Tribes may have to recruit non-Indians to fill many of the new positions due to a lack of training, the Tribes anticipate that the majority of these jobs will eventually be held by Tribal members.

E. BASIS FOR PROJECTING THE INCREASE IN TRIBAL EMPLOYMENT:

When we assume the figures provided by Dr. Murphy are accurate, the impact of a total of 450 new jobs on the reservations will have a substantial beneficial impact on tribal unemployment. The following figures provided by the three Tribes bolster this contention (Tab 5):

TRIBE	TOTAL ENROLLMENT:	NUMBER LIVING ON THE RESERVATION:	LABOR FORCE:	UNEMPLOYMENT RATE:
Red Cliff:	3,180	1,651	821	39% (321)
Lac Courte Oreilles:	5,431	1,923	1,362	58% (800)
Sokaogon:	1,528	512	198	42% (83)

Since each Tribe has a high unemployment rate, the jobs created on the reservation will provide incentive to Tribal members to work on the reservation rather than moving to Hudson for employment. Tribal members living off the reservation would also have incentive to move back.

F. PROJECTED BENEFITS FROM TOURISM:

As with any project of this nature, the success of the Tribe's proposed facility will depend on the volume of people/visitors who come to gamble at the Tribe's proposed facility. Based on the Market Analysis prepared by Dr. Murray, the Tribes estimates that 3,184,330 people will visit the facility annually (Tab 4,

page 15). Of that number, 95% are expected to come from the Twin Cities area and are expected to drop \$199,399,166; 5% of the visitors will come from outside the Twin Cities Area and are expected to add \$5 million to the net profit of the facility Id.

G. PROJECTED TRAINING BENEFITS:

In their cover letter, the three Tribes stated that the Hudson Venture will "provide both jobs and training at the supervisory and managerial levels for our people" (Tab 1, page 5). They plan to implement a cross training internship program to accomplish this goal. The Tribe's representative has stated that the internship program will last one year and will obligate the trainee to stay on an additional year to help train other employees.

Under the Joint Operating Agreement (Tab 7D, § 5.8.2) as positions in the facility become available, preference in recruiting, training, and employment in all job categories of the Enterprise, including management positions, shall be given first to qualified members of the Tribes and their spouses and children; second to qualified members of other Tribes and their spouses and children; third, to residents of the City of Hudson; fourth, to residents of the Township of Troy; fifth, to residents of the County of St. Croix.

H. PROJECTED BENEFITS TO THE TRIBAL COMMUNITIES FROM THE INCREASE IN TRIBAL INCOME:

The Tribes contend that substantial benefits would accrue to their Tribal members and surrounding communities. Specifically, they show the following benefits will result (Tab 1, page 7):

- The creation of approximately 150 new jobs on each reservation.
- The employment will generate an annual average of about \$3 million per Tribe in added earnings for these employees.
- A total of over \$11 million in additional earnings and 600 additional jobs will be created as a recirculation of the gaming revenue.
- The proceeds will be applied to health, education, scholarship funds, housing, elderly care, early child care, land purchases and other community support services and as per-capita payments. The Tribes expect that a substantial increase in the quality of life will be directly experienced by all members.

Our data indicates that the three Tribes have high rates of unemployment and poverty in spite of having developed local

tribal gaming facilities. This is true in part because they are located farther away from urban markets than other tribes in Wisconsin and Minnesota. The Hudson proposal will help remedy this problem by providing these Tribes with access to a urban market for gaming.

As we have already indicated, the Tribes have relatively small populations and land holdings. Thus, the proposal is expected to have a significant positive impact. However, the positive impact is not expected to be employment in the proposed facility, but from the spending of the income by the Tribes on their respective reservations.

I. PROJECTED BENEFITS TO THE RELATIONSHIP BETWEEN THE TRIBES AND SURROUNDING COMMUNITY:

The Tribes anticipate that between 80 and 90 percent of the 1600 employees will be from the non-Indian surrounding community (Tab 5, Page S-2). The Tribes are also committed to providing funding for the increased infrastructure costs to the City of Hudson (Tab 1, page 12). This indicates the Tribes willingness to cooperate with the surrounding community as well as the local governments. Once the Casino goes into operation and begins generating income for the community, we anticipate an improvement in the relationship between those persons now opposed to the Hudson Venture, casino management, and the three Tribes.

J. POSSIBLE ADVERSE IMPACTS ON THE TRIBES AND PLANS FOR DEALING WITH THOSE IMPACTS:

The Tribes have stated that they do not anticipate any adverse impacts as a result of this proposal.

The Minneapolis Area Office recognizes possible conflict between some members of the local community and the proposed management of the Hudson Venture. In fact, a member of the local Hudson community has formed her own activist group to oppose the Casino. The group has submitted a petition in opposition to the Venture and claims to have collected over 3,000 signatures. Please note, the petition was submitted after the City of Hudson, County of St. Croix and the School District of Hudson, held public hearings, made findings and submitted their own comments on the proposal. Thus, we have only provided cursory review of the petition. We have not determined whether all the people who signed the petition are registered voters in the State of Wisconsin or Minnesota. Since the group has not provided any additional specific substantive reasons as to why the Hudson Venture should not be approved, other than those already addressed, we have informed the local activist group that the petitions should be directed to the Governor of Wisconsin.

Nevertheless, we do not regard the possibility of friction

between some members of the local community and the three Tribes or the management of the proposed Venture, as grounds to reject the proposal.

II. NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

A. CONSULTATION:

To satisfy the consultation required by Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719 (1988), the Bureau of Indian Affairs, Minneapolis Area Office, consulted with State and local government officials and nearby tribes on the impacts of the gaming operation to the surrounding community (Volume III). The Bureau's consultation process consisted of letters to local government officials, including the applicant Tribe, seeking responses to several suggested areas of discussion for an analysis of the "best interest of the tribe and its members" and "not detrimental to the surrounding community" determination Id.

1. Consultation with the Governor of the State of Wisconsin:

There has been no consultation with the Governor of Wisconsin by the Minneapolis Area Office or the Great Lakes Agency since it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings.

2. Consultation with the City of Hudson:

(a) Mayor: The Mayor of the City of Hudson, Thomas H. Redner, responded to our request for input by providing detailed material addressing possible impacts on the environmental, social structure, infrastructure, land use patterns, income and employment, the possible need for additional services and compulsive gamblers programs. The Mayor stated in his cover letter, that "the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size" (Volume III, Tab 1).

(b) Common Council: The Common Council of the City of Hudson adopted a resolution with a stated purpose of protecting the "city's interest in the event the transfer takes place." The Council only sought to protect the City's financial interest and did not take a position on the proposal (Volume III, Tab 1, page 12).

(c) School District: The School District of Hudson provided considerable correspondence on the proposal (Volume III, Tab 4). Their primary concern was insuring that the tax revenue that would be lost after the land was placed into trust be replaced. To accomplish this, the School District passed a resolution to protect their financial interests (Volume III, Tab 4). However, the resolution did not approve or disapprove the purpose of the proposal. An agreement between the City, County and Tribes was

eventually finalized (Volume I, Tab 9). It provides for a distribution formula for services to be paid by the Tribes. The School District approved the distribution formula in an intergovernmental agreement with the County on April 12, 1994. The particular financial aspects of the agreement are discussed in Part I of this report. The School District then wrote to the Governor of the State of Wisconsin calling for in-depth investigations regarding the impact on education (Volume III, Tab 4, page 7). They expressed their desire for additional funding, earlier growth escalators and the possible need for a reversionary clause in the deed. This indicates weak support for the current proposal.

3. Consultation with the County of St. Croix:

The County Board Office of St. Croix County, Wisconsin also provided correspondence on the proposal (Volume III, Tab 2). On March 13, 1994, prior to the signing of the "Agreement for Government Services", they wrote to the Governor to advise him that significant back real estate taxes are owed on St. Croix Meadows (Volume III, Tab 2, page 8). The Board requested that the Governor not approve any agreement in relation to the proposal until the county has received payment of all real estate taxes, penalties, and interest due and unpaid on the St. Croix Meadows dog track property. They also noted strong public opposition to the proposal. However, after the signing of the agreement, the Board showed their support of the proposal by criticizing the Hudson School District in their call for in-depth investigations by the Governor (Volume III, Tab 2, page 10). No mention was made of the public opposition. This indicates that the Board fully supports the proposal.

The St. Croix County Board Office also prepared an "Impact Assessment" of the proposed gaming establishment (Volume III, Tab 2, page 1). It focused on the impact of the proposal to the County as a whole, including the City specifically. The assessment was prepared by the County Planning Department Staff and reviewed by the Chairman, Richard Peterson. Although each of the seven subject matters were addressed, Mr. Peterson stated in the cover letter that the County could not conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. We note that this assessment was completed prior to the signing of the Agreement for Government Services.

4. Consultation with the Town of Troy:

The Town of Troy provided their response to our consultation letter on March 14, 1994 (Volume III, Tab 3). The town had several areas of concern dealing with, increased traffic, lowered standard of living, limited housing, and the possible additional cost services.

The town's concern over increased traffic is addressed in the Finding of No Significant Impact. The concern over a lower standard of living as an argument against the proposal is without merit since the Tribes have indicated that the proposed gaming facility will require many supervisory and managerial positions as well as training programs. Additionally, Dr. James M. Murray estimates that 85 percent of the employment and payroll in the expanded operation will accrue to Wisconsin residents and that 90 percent of the spending at the proposed gaming facility will originate from outside the state of Wisconsin (Volume I, Tab 5, page 12). The concern of limited housing does have merit. However, we find that any growth to the community as a result of gaming facility would not have a detrimental affect on Hudson. The towns concern over additional cost of services has been addressed in the Agreement for Government Services.

5. General Public Response:

(a) Public Opposition: Approximately 76 letters⁴, written by people in the Hudson community, were sent to the Department of the Interior expressing opposition to the proposal. Their arguments against approval of this proposal are based primarily on social concerns, i.e. concern over increased crime; concern over the impact of gaming on the children in the area; concern over the projected increased traffic; concern over a possible increased cost to the city; possible increased cost to the social programs that problem gamblers would cause; concern over organized crime; and general concern over the diminishment of the aesthetical values to the city. The people against this proposal also cited the referendum of April 1993, to show that a majority of people were against the expansion of gambling in Wisconsin. Many stated that the market is already saturated and that the dog track was a failure so the Casino will be too. As a result, it is only serving as a "bailout" for the current owners of the St. Croix Meadows. Many people stated that Hudson is fine economically without the casino and does not need the low paying jobs that would be created. A few people were morally opposed to the idea of gambling.

Approximately 3,100 people signed a petition expressing opposition to the proposal. We have not verified the legitimacy of the signatures. Nor have we determined how many people who signed the petition are registered voters in Hudson. It is our determination that these petitions should be directed to the Governor of the State of Wisconsin.

A thorough report was sent in by one member of the Hudson community to provide evidence to form a basis to reject the application. However, each of the issues raised in the report

⁴ These letters are attached.

have been addressed by the Tribe's application, in the Finding of No Significant Impact, by the local governments of Hudson, or in other areas of our findings. Many of the arguments advanced by people opposed to the proposal are also political in nature and raise policy issues for the Department of the Interior. It is our determination that none of these issues form a basis to reject the proposal.

(b) Public Support: One letter, written by Wisconsin State Legislature, Doni Burns, was sent expressing support for the proposal. He stated that the majority of people in Hudson were in support of this proposal. To support his position he referred to a referendum passed in 1992 in regard to the possibility of a casino at St. Croix Meadows.

The referendum voted on in 1992 asked the following question:¹

Do you support the Transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?

Results: 1,351 people voted "yes", (51.2%);
1,288 voted "no" (48.8%)

The survey results were provided by the City of Hudson and referred to in a number of the responses by people in favor as well as people opposed to the casino.

This referendum differs from the April 1993 statewide referendum in that it is site specific. The 1993 statewide referendum (Volume II, Tab 8) which has been cited by people opposed to the proposal, asked:

"Do you favor a constitutional amendment that would restrict gambling casinos in this state?"

St. Croix County results: 6,328 voted "yes" (65.4%)
3,352 voted "no" (34.6%)

While the Hudson Proposal may be an expansion of a type of gaming in Hudson, it will not be an expansion of a gaming facility. Additionally, since the Tribes have agreed to a limited number of Class III facilities with the State of Wisconsin, it will also not be an expansion of gaming in Wisconsin. It may also be argued (indeed, the Tribes have done so) that this is not an expansion of gaming even in Hudson since the building is already

¹ The question and results were obtained from the City of Hudson (Volume III, Tab 1, page 11).

in place and the dog track is currently in operation. At any rate, it is our determination that the 1993 referendum, standing alone, does not preclude the Secretary of the Interior from making a determination the Hudson proposal would not be detrimental to the surrounding community.

Approximately 800 people signed a petition supporting the Hudson proposal. They did not provide any supporting reasons. No evidence has been provided to show that these signatures are not legitimate. However, we have not verified the residency of these supporters or determined whether or not they are registered voters in the State of Wisconsin or elsewhere.

6. Consultation with Neighboring Tribes:

18 Tribes in the State of Minnesota and Wisconsin were informed of the proposal (Volume III, Tabs 5 - 16). We requested that these Tribes provide input on the impact the proposal would have on their respective reservations by letter, all dated December 30, 1993. Nine of the eleven responses that we received were emphatically against the proposed Hudson project. However, none of the Tribes that responded provided reliable or scientific data to support their views. The following are the Tribes and Tribal Organizations that responded as a result of our inquiries and a summation of their comments and our response:

(a) St. Croix Band of Chippewa Indians of Wisconsin: St. Croix is strongly opposed to the project (Volume III, Tab 12). They stated, "the proposed Hudson fee to trust acquisition will have an extreme detrimental and crippling impact on the St. Croix Casino located in Turtle Lake, Wisconsin." They supported this position by providing a detailed response to the seven questions and an Impact Statement. This material focused heavily on the probable loss of revenue at the Tribe's Turtle Lake Casino. The St. Croix Tribe stated that the Hudson proposal would cut into the revenue generated at their Turtle Lake Casino because the Hudson proposal is larger, in a better location and has a better highway system. St. Croix also stated that the gaming market is already saturated and as a result, they would have to increase marketing expenditures just to survive and would lose current qualified employees to the Hudson project. The Tribe did not provide any data to support their position.

St. Croix provided a casino density illustration to show that "the market is becoming saturated". However, they did not provide any financial studies to back up this or any other claim dealing with a loss of income.

We question St. Croix's opposition to this project since initially, they were the first Tribe to consider purchasing the St. Croix Meadows Dog Track for gaming purposes. We also find that their economic position is overstated since they have two

casinos currently in operation and may also be working to purchase the Lake Geneva Dog Track to add a casino.

(b) Wisconsin Winnebago Nation: The Wisconsin Winnebago Business Committee responded by stating that they do not want this proposal to even be considered until the State of Wisconsin has fulfilled its commitment under the Tribal/State Compact to agree to a fourth Class III gaming site for the Wisconsin Winnebago Nation (Volume III, Tab 13).

We find that the conflict over the Gaming Compact between the Wisconsin Winnebago Nation and the State of Wisconsin provides no legal basis to reject the Hudson's proposal.

(c) Leech Lake Band of Chippewa Indians: The Leech Lake Tribal Council passed a resolution against the proposal (Volume III, Tab 6). They stated that numerous problems will arise for the State and the gaming Tribes in Minnesota if gaming is expanded to off-reservation locations. According to the Tribe, the problems would not only be a monetary loss to the surrounding Tribes but also political in nature due to the unfair use of the "special trust and tax status" of the Tribes. However, they did not elaborate as to what the political ramifications would be. Nor did the Leech Lake Band provide any justification for limiting the expansion of gaming to "off-reservation" locations.

(d) Shakopee Mdewakanton Sioux Community: The Shakopee Mdewakanton Sioux Community's Business Council passed a resolution stating their opposition to the proposed Hudson Venture (Volume III, Tab 11, page 3). Their objections were based on loss of income for the surrounding gaming Tribes and the political ramifications. Specifically, the Business Council stated the proposed casino would have a "detrimental political impact in Minnesota since Minnesota Tribes have agreed by formal tribal/state compacts to not expand Tribal gaming off-reservation..."

The Community also argued that the proposed area is actually Mdewakanton Sioux territory Id. As a result, they feel that approval of an off-reservation gaming facility in Hudson should be reserved for the Mdewakanton Sioux Tribe. We have found no legal basis for this argument. Our Fee to Trust review under 25 C.F.R. Part 151 will identify any interest this Tribe may hold in the land at Hudson.

The Chairman and CEO of the Little Six, Inc., also responded on behalf of the Mdewakanton Dakota Community (Volume III, Tab ii, pages 8 - 11). He stated that the Community "vehemently opposes" the proposal for the following reasons:

- 1) This is only an off-reservation gaming experiment which could have devastating impacts on the negotiation process

among the National Indian Gaming Association, Congress, State Governors, and Attorneys General.

2) This proposal could damage the national efforts to protect gaming and could have severe political ramifications in Minnesota. They did not elaborate or provide any scientific information to support this claim.

3) The proposal could cause the State of Minnesota to open up gaming around the State thereby diminishing the beneficial economic impact of Indian Gaming. The Tribe has not provided any legal justification to show why gaming should not be expanded by Wisconsin Tribes in Wisconsin.

4) The market is at or very near the saturation point and cannot absorb another casino in the Twin Cities area without having a negative impact on jobs. A market study has not been provided by the Shakopee Mdewakanton.

5) The proposal could damage the current cooperative government to government relationship between the State of Minnesota and the Tribes. The Tribe has yet to explain how this will happen.

(e) Prairie Island Dakota Community: The Prairie Island Dakota Community passed a resolution voicing their opposition to the proposal (Volume III, Tab 10). They stated that the Hudson Casino would "saturate the already extremely competitive Minneapolis-St. Paul market area." In addition, the Tribe contends that they would not be able to compete due to the advantages the Hudson site offers. Specifically, the Tribe stated that they would suffer a severe loss of revenue (they estimate a 30%-50% reduction in customers) due to the following reasons: the proximity of Hudson to the metro area, the proximity of the proposed casino to an interstate highway and because the dog track is already an existing "first-class facility".

(f) Lower Sioux Community: The Lower Sioux Community did not pass a resolution opposing the proposal. However, the Chairman did write a letter indicating his opposition (Volume III, Tab 7). He stated that the Lower Sioux Community would be severely and unfairly damaged economically. He also indicated that the Community would be damaged politically since all of the Minnesota Tribes have not sought to locate a gaming establishment away from the reservations and to do so would cause a region-wide and probably a nation-wide race by other Tribes to do the same. No data was provided to validate his arguments.

(g) Minnesota Chippewa Tribe: The Minnesota Chippewa Tribe passed a resolution opposing the Hudson Project (Volume III, Tab 14). They stated this proposal could set a dangerous precedent by creating an open market for expansion by other Tribes.

(h) Mille Lacs Band of Chippewa Indians: Although the Mille Lacs Band did not pass a resolution to declare their opposition to the proposal, the Chief Executive did write a letter stating the Tribe's opposition and referred to letters written by the Minnesota Indian Gaming Association (Volume III, Tab 8). She also asserted that the Indian Gaming Regulatory Act was designed to act as a reservation based economic development tool and that the Hudson proposal is inconsistent with that intent. She said that reservation based gaming has allowed Mille Lacs to take a 45% unemployment rate to "effectively zero". She feels this number would increase should the proposal go through. No studies or data was provided to support these claims.

(i) Minnesota Indian Gaming Association: The Minnesota Indian Gaming Association passed a resolution and wrote a number of letters expressing their opposition to the Hudson Proposal (Volume III, Tab 15). They stated that since Minnesota Tribes oppose off-reservation gaming activity and have promised not to expand tribal gaming off-reservation, the Hudson proposal is an infringement upon their own inherent sovereign rights. In addition, the following reasons were given for their opposition:

1) Other gaming Tribes would suffer economically due to the Hudson proposal's close proximity to the metro area. In particular, the more remote casinos would be hurt.

2) The St. Croix area has historically been considered to be Dakota land. Findings: This issue will be addressed in the actual transferring of the land into trust pursuant to 25 C.F.R. Part 151. The objections identified in the Preliminary Title Opinion, if any, will have to be satisfied before the land may be transferred.

3) An off-reservation expansion of this magnitude would create huge political problems for Minnesota Tribes. The Minnesota Indian Gaming Association stated that State Legislators have been under political pressure from private businesses who want to expand gaming by placing video games in bars among other things. They also stated that they have fought hard to keep this from happening and the this proposal would jeopardize what they have fought to maintain.

MIGA also argues that the National Governors Association and other adversaries have been stating that tribes would expand gaming off-reservation into major cities in direct competition with non-Indian businesses. MIGA does not want them to be proven right.

(j) Lac du Flambeau Band of Lake Superior Chippewa Indians: The Lac du Flambeau Band stated that they do not oppose the Hudson project (Volume III, Tab 1). They also stated that their experience in gaming indicates that there would be a beneficial

impact.

(k) Oneida Tribe of Indians of Wisconsin: The Oneida Tribe stated that since they are located 250 miles away from Hudson, Wisconsin, they are not in a position to offer detailed comments or analysis on the impacts of the proposal (Volume III, Tab 9). They did state that they do not perceive that there would be any serious detrimental impacts on their reservation or gaming operations.

B. IMPACT ON NEARBY TRIBES:

1. Economic:

None of the Tribes who have written to our office to protest this proposal has provided us with any figures to back up their claim that the Hudson Venture would be "devastating economically" to the other casinos in the area. As a result, we must rely heavily on the study prepared by Arthur Andersen and Dr. Murphy to estimate the impact on the other Tribes economically.

Arthur Anderson's study estimates current market revenue for the six existing casinos in the Minneapolis/St. Paul area to be \$510 million with a total estimated market revenue between \$550 and \$630 million' (Volume I, Tab 3, page 21).

Since the Hudson Venture's share of the market is estimated to be \$80 Million, AA has found that even though the existing casinos would suffer some economic loss, the "proposed Hudson casino should not significantly impact aggregate revenues of the existing casinos" Id. We have particular concern over the economic impact of those casinos located within 55 road miles from Hudson. They include the Mystic Lake Casino, Turtle Lake Casino and Treasure Island Casino. Each of the Tribes operating these casinos have voiced strong opposition to the Hudson Proposal based on economic reasons. However, none of these Tribes have provided our office with any hard figures to back up their claims.

On August 12, 1994, we requested the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes provide an analysis which focuses on the particular economic impact of the proposed casino on the

¹ The market was estimated by Arthur Andersen & Co. using the following figures:

Population within 100 miles.... 3,800,000
MULTIPLIED BY: Estimated per capita gaming revenue.... \$145 - \$165

We also note that the Hole in the Wall Casino in Danbury, Wisconsin, was not included in figuring the total estimated market revenue.

Mystic Lake, Turtle Lake and Treasure Island Casinos. The Tribes did not respond in writing. Their representative, Bill Cadotte, did state that there is no legal basis to reject the proposal based on what the potential political ramifications "might" be. We concur. Specifically, we find that additional market studies cannot be completed by the three Tribes without financial data supplied by the three casinos in question.

2. Political:

A number of Tribes and commentators have indicated that expansion of off-reservation gaming erodes their political power and will eventually undermine their ability to limit States from expanding gaming. However, it can be argued that each new gaming operation, whether or not on land placed into trust prior to October 17, 1988, erodes Tribal political power to protect the gaming industry. We find that the Tribal Sovereignty of the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes is far more important than limiting the expansion of Tribal Gaming. In fact, each Tribe currently operating gaming facilities went into the industry knowing that expansion into major metropolitan areas was a possibility and maybe even likely. We find that it is up to each individual Tribe to operate within the limits of the Indian Gaming Regulatory Act, their Class III Gaming Compacts and their existing governing documents. The Minneapolis Area Office will not restrict Lac Courte Oreilles's, Red Cliff's, Sokaogon's or any other Tribe from operating within these limits and find that any negative political ramifications from this proposal would be minimal.

C. EVIDENCE OF ENVIRONMENTAL IMPACTS AND PLANS FOR REDUCING ANY ADVERSE IMPACTS:

The Lac Courte Oreilles and Red Cliff Bands Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust 55.82 acres of land. The proposed trust site consists of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a Class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

1. Environmental Considerations:

An "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" was prepared by

Mid-State Associates, Inc., in accordance with the requirements of the Wisconsin Racing Board Application for License (Volume IV, Tab 4). An addendum to the Environmental Assessment was prepared by Bischof & Vasseur for the proposed trust acquisition (Volume IV, Tab 3). Based on the findings of the EA and the Addendum, the Superintendent, Great Lakes Agency, found that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary. The *Finding of No Significant Impact* was issued on September 14, 1994 (Volume IV, Tab 1).

A Level I Hazardous Waste Survey has not yet been completed. However, we do note that a Phase I Environmental Property Assessment has been prepared by Braun Intertec for the Tribes. It indicates that there are no documented or observable environmental concerns associated with asbestos containing building materials or underground storage tanks. It also states that there is no documented evidence indicating any past or current land-use activities that have had an adverse environmental impact on the site. We also note that prior to the United States taking the land into trust, a Level I Hazardous Waste Survey must be completed and approved at the Area Office. We will satisfy this requirement under the 25 C.F.R. Part 151 process.

2. Natural and Cultural Resources:

The addendum to the Environmental Assessment states that the proposed facility will have no new significant short-term, long-term, or cumulative impacts on the regional geology, including bedrock and soils, ground water/water quality, or climate (Volume IV, Tab 3).

The Addendum also states that the facility is not expected to impact any natural areas such as native trees or wildlife habitat. Additionally, there are no anticipated impacts from the planned action on wetlands or other surface waters in the area. According to the National Wetlands Inventory Map for the site, there are no designated wetland areas located on the site. No rare plant or animal species or other significant natural feature will be adversely impacted.

(a) Land Resources: The topography of St. Croix County ranges from gently rolling to hilly and rough (Volume IV, Tab 4, pages 3 & 4). All of the county has been covered by continental glaciation. The St. Croix River has also had a major impact on the topography of the area. The St. Croix River is bounded by 100' - 200' bluffs along its eastern shore. The Hudson Casino Venture would be located on the plateau above these river bluffs.

The site where the proposed facility would be located and the

immediate area surrounding the site is "mostly gently rolling with an average elevation of 840 feet" Id.

The site surrounding the facility is a combination of many soils. Pillot silt loam is the most common Id. The slope of this soil is 0 to 3 percent so runoff is slow and there is slight hazard of erosion. Most of the remaining soil at the site is Burkhardt-Sattre complex of differing slopes. Since most areas of the Burkhardt-Sattre complex are cultivated, there is no identified erosion or soil blowing problem.

Since the planned action will utilize the existing racetrack facilities, there will be no significant impact on prime or unique farmlands in the Farmland Protection Policy Act (Volume IV, Tab 3, page 3).

(b) Water Resources: The Hudson area has an abundance of groundwater. All potable water used in St. Croix County is groundwater. The supply of water is presently determined by the ability to pump it out of the ground. The source of the groundwater is precipitation (Volume IV, Tab 4, page 3).

The Hudson area surface waters occupy two major drainage systems. The St. Croix River drains the western two-thirds of St. Croix County. The balance of the county is mostly drained by the Chippewa River which flows into the Mississippi River Id.

The St. Croix River is located approximately 4800 feet to the west of the proposed facility. There are no other existing surface water bodies in the EA study area Id.

(c) Air Quality: Both the City of Hudson and St. Croix County have stated that the projected traffic increase will not cause the air quality to exceed applicable standards (Volume III, Tab 1, page 1 and Volume III, Tab 2, page 2). Air monitoring stations are currently in place at the track exit and the southeast corner of the Carmichael Interchange to detect any change in the air quality which could be harmful to the area Id.

(d) Threatened and Endangered Species: St. Croix County is listed as a habitat for the following three endangered or threatened species (Volume IV, Tab 4, page 4):

- (1) Peregrine Falcon - Potential breeding habitat; Endangered.
- (2) Bald Eagle - Breeding and wintering habitat; Threatened.
- (3) Higgins' Eye Pearly Mussel - River habitat; Endangered.

According to the EA, site visits in 1988 to the area around the proposed facility did not detect any of these species Id. The development site may serve as a habitat for the Peregrine Falcon and Bald Eagle. However, none have yet been located. Additionally, there is no habitat for the Higgins' Eye Pearly

Mussel at the site. At any rate, the natural area consisting of vegetation or wildlife habitat will not be impacted by the internal construction or additional traffic flow Id.

(e) Cultural Resources: No specific cultural resources or structures are known to exist on the site.

The State Historical Society of Wisconsin has stated that there are no buildings in the study area that are listed in the National Register of Historic places (Volume IV, Tab 2, page 2).

The Mississippi Valley Archaeology Center, Inc., stated that there are no known archeological sites in the proposed project area (Volume IV, Tab 2, page 3).

D. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY:

Concern over an increase in crime has been expressed by most of those people who wrote to oppose the Hudson Venture. However, none of the letters contained any scientific or statistical evidence to back up this claim. The City of Hudson has stated that similar predictions were made in regard to the St. Croix Meadows dog track before it went into operation in 1990. The City stated, to date, "none of the earlier negative predictions concerning increased crime, etc., have come true..." (Volume III, Tab 1, page 2). To prevent any crime escalation in the City of Hudson, and to help offset any fear among the community, the City has stated that they will hire an additional Investigator Crime Prevention Office in the year the Casino is opened (Volume III, Tab 1, page 4). The City also expects the Police Department to expand the police force by five officers and one clerical employee within the next five years Id. Additionally, the Tribes have stated that they are committed to paying for the reasonable costs of these services (Volume I, Tab 1, page 12).

The City stated that the residents of the community have come to accept the dog track's existence and that there is no overwhelming majority of citizens either in favor of or opposed to the casino (Volume III, Tab 1, page 2). Nevertheless, the city is prepared to handle any negative reaction by the community over the casino.

E. IMPACT ON THE INFRASTRUCTURE:

1. Utilities:

The current facility is supplied by existing public water, sanitary sewer, electric, and telephone utilities. No additional infrastructure is scheduled to be constructed as part of the proposed action.

2. Zoning:

According to the City of Hudson, most of the proposed trust site is zoned general commercial district (B-2) for the principal structure and ancillary track, kennel and parking facilities (Volume III, Tab 1, page 4). Six acres of the proposed trust site are currently zoned single family residence Id. The east, south and westerly perimeters are classified as on-family residential districts (R-1) and serve as a buffer area between the track operation and other surrounding land uses Id.

3. Water:

The City of Hudson stated that the water trunk mains and storage facilities are adequate for providing water service to the proposed casino and "ancillary development south of I-94" (Volume III, Tab 1, page 3).

4. Sewer and Storm Drainage:

According to the Impact Assessment of the Proposed Casino on St. Croix County which was prepared by the County, St. Croix County anticipates an increase in waste generation from the proposed casino (Volume III, Tab 2, page 1). Currently, the St. Croix Meadows generates .5 pounds per person Id. This equals approximately 104 tons of waste per year. Based on the anticipated average daily attendance of 7,000 people, the proposed casino would result in a production of 639 tons of waste per year, an increase of 535 tons. The County has stated that the waste-to-energy facility that services St. Croix County has adequate capacity to handle the increase Id. To verify the figures, the County compared their estimates to the St. Croix Bingo and Casino gaming facility in Turtle Lake, Wisconsin. That facility averages .53 pounds per person or 677 tons per years.

An existing storm water collection system collects storm water runoff and directs it towards a retention pond located near the southwest corner of the parking area. From there, collected storm water is allowed to evaporate, percolate into site sils, or slowly flow along a regional storm water control system towards the St. Croix River (Volume IV, Tab 4, pages 7 & 8). According to Hudson officials, the existing storm water control system is adequate to handle storm water runoff from the site (Volume III, Tab 1, page 3).

5. Lighting:

The County has stated that although the City of Hudson has jurisdiction to control and monitor the lighting, the County has a responsibility to surrounding neighbors in other jurisdictions (Volume III, Tab 2, page 2). As a result, the County expressed that any changes made to the current lighting system take into

consideration the larger community which may be affected. They did not express any dissatisfaction with the current system.

The City of Hudson stated that this concern was addressed at the time St. Croix Meadows was constructed. Specifically, a lighting system is already in place which reduces the light spillage at the property lines "to an amount equivalent to residential streets" (Volume III, Tab 1, pages 1 & 2). The City also acknowledged that the lights may be on for extended periods of time because the casino operation is likely to be open until 2:00 a.m. or 24 hours per day Id.

6. Roads:

(a) Access: The City of Hudson stated that the current street system is sufficient enough to accommodate projected traffic needs based on 40,000 average daily trips (Volume III, Tab 1, page 4). However, development on Carmichael Road north of the proposed casino may be necessary. Specifically, traffic regulatory signals will likely be needed at the interchange of Carmichael Road and Hanley Road.

St. Croix County expressed particular concern with increases in traffic on USH 12, CTH UU, CTH A, and Carmichael Road (Volume III, Tab 2, pages 2 & 3). The County stated that even minimal traffic increases will have a negative impact on these roadways since they are already at capacity. However, information gathered from the Wisconsin Department of Transportation indicates that any negative impact from additional traffic will be minimal (Volume IV, Tab 3, pages 38 & 39).

(b) Traffic Impact Analysis: A traffic study was completed and is contained in the 1988 Environmental Assessment for the St. Croix Meadows dog track (Volume IV, Tab 2, page 18). It is based on traffic projections in the year 2011. Peak traffic estimates were provided to the Wisconsin Department of Transportation regarding the proposed Hudson Casino Venture. No significant problems were identified regarding the proposed traffic increase on the Interstate 94/Carmichael Road Interchange.

The *Finding of No Significant Impact* (Volume IV, Tab 1) also indicates that although no transportation system is likely to be developed in Hudson that would assure there will be no slow-down or delays during peak traffic periods, various methods would be utilized to manage delays should they occur. These methods include varying dog track racing times so as not to coincide with peak casino attendance times, elimination of parking fees and gates for easy parking lot entry, use of shuttle buses and remote parking areas, possible adjustment of time delays on traffic lights during peak attendance times, and installation of traffic lights.

EOP 064537

F. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY:

The City has stated that approximately 25 acres of the site is developed. The six acres that are zoned as single family residence have limited development potential; 18.5 acres are located in an area of the bluff east of the track and are generally not suited for development, although there may be some potential; 5.5 acres are suitable for development (Volume III, Tab 1, page 4).

The City of Hudson has stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses Id.

G. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY:

Total employment at the proposed facility is expected to be between 1,500 and 1,600 positions. Current employment figures at St. Croix meadows is approximately 175 full-time positions and 225 part-time positions (Volume III, Tab 2, page 4). All existing employees would be offered re-employment at their current wage rates. Thus, between 1,100 and 1,200 new positions are expected to be generated Id.

Even though the three Tribes will give hiring preference to their own tribal members, 80-90% of the new positions are expected to be filled by non-Tribal members already living in the Hudson area Id. Wage rates for these jobs are estimated at between \$5 and \$10 per hour, not including salaried positions Id.

According to statistics provided by the St. Croix County, the service industry accounts for 20 percent of the County's 1993 total labor force of 28,300 people. Since the casino is expected to pull some employment from existing service jobs within the county, County officials estimate that approximately 175 service positions will be filled by currently unemployed County residents either through direct employment at the casino or by other service jobs Id.

The remaining 900-1025 positions are expected to be filled by people from the nearby Wisconsin counties.

According the Economic Impact Report by Dr. James Murray, over 90 percent of the spending at the proposed Hudson Gaming Facility is expected to originate from outside the state (Volume I, Tab 5, page S-2). Dr. Murray estimates the total impact of the gaming facility would be to support 2,691 jobs and generate over \$56 million in annual earnings for residents of Wisconsin (Volume I, Tab 5, page 12).

H. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO: ..

Additional services will be needed in the City of Hudson, County of St. Croix and at the site of the Hudson Project. To assure that all necessary services are provided, the three Tribes, County of St. Croix and the City of Hudson have entered into an Agreement for Government Services (Volume I, Tab 9). In the agreement, the Tribes, through their EDC's, will pay the City and County for general government services, including, but not limited to, the following services: police, fire, water, sewer, ambulance, rescue, emergency medical and education. These services will be provided in the same manner and at the same level of the services provided to residents of the City and County and other commercial entities located in the city and county. The agreement will continue for as long as the land is held in trust or until Class III gaming is no longer operated on the land.

I. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING:

Currently, there is not a compulsive gamblers program within St. Croix County. The County has indicated that if the Hudson Project goes into operation, their Human Services Department would initiate staff training and would develop treatment programs, including initial on-site screening of potential problem gamblers, treatment and aftercare services (Volume III, Tab 2, page 5).

There are six State-Funded Compulsive Gambling Treatment Centers in Minnesota (Volume II, Tab 7, page 38). Two are in Minneapolis. The other four are located in St. Cloud, Bemidji, Granite Falls and Duluth. According to the Minnesota Council on Compulsive Gambling, since 1984, limited funds have been appropriated by the Minnesota Legislature for training, research, gamblers' hot-line services, rehabilitation and public awareness programs (Volume II, Tab 6, page 2). Unfortunately, Minnesota Planning has also found that current levels of treatment in Minnesota are inadequate and that some treatment facilities already have waiting lists while others are near capacity (Volume II, Tab 7, page 37).

Since there are no Wisconsin state-funded treatment facilities near Hudson, the three Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. Additionally, the Tribes have stated they will contribute money to local self help programs for compulsive gamblers (Volume I, Tab 1, page 12).

III. RECOMMENDATIONS

Based upon the discussion and conclusions provided above, we recommend that the Secretary of the Interior find that the proposed action will be in the best interest of the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes and that it will not have a detrimental effect on the surrounding community. We also recommend that the decision be made to take this particular parcel into trust for the three Tribes for gaming purpose.

I attest that I have reviewed this transaction and the case file is documented in compliance with all of the above stated regulations and facts. I further state that I will not accept the property in trust until I have received satisfactory title evidence in accordance with 25 C.F.R. Part 151.12.

ATTEST:

11-17-74
Area Director

11-17-74
Date



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Minneapolis Area Office
251 South 2nd Avenue
Minneapolis, Minnesota 55401-2541

IN REPLY, PLEASE REFER TO

Tribal Operations

April 20, 1993

Memorandum

To: Assistant Secretary - Indian Affairs

From: Office of the Area Director

Subject: Trust Acquisition Request - St. Croix Meadows Dogtrack Property

Attached is a request by the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the Tribes) to place 55.82 acres of land into trust status for the benefit of all three tribes. The property consists of the St. Croix Meadows Greyhound Racing Facility and is located in Hudson, Wisconsin. In addition to the land, the Tribes have also entered into an agreement to purchase the assets of the track from the current owners. Once the requirements of the Indian Gaming Regulatory Act of 1988 are satisfied, the agreements to purchase the assets of the dogtrack are executed, and the land is placed into trust, the Tribes will add casino type gaming to the facility.

The Tribes are currently awaiting satisfaction of the requirements of the Indian Gaming Regulatory Act of 1988 before executing the land and asset purchase agreements. We transmitted our Section 20 Recommended Findings of Fact and Conclusions for this project to you on November 15, 1994. Since that time, the Tribes have specifically requested that the Bureau of Indian Affairs begin the process of placing the land into trust status. As a result, we obtained the attached Preliminary Title Opinion from the Office of the Field Solicitor, Twin Cities. We have also attached the following material in support of the trust acquisition:

- 1) Title Insurance Commitment;
- 2) Level I Hazardous Waste Survey;
- 3) Finding of No Significant Impact;

EOP 064293 I



- 4) Maps of the property;
- 5) Tribal Resolutions requesting the land be placed into trust;
- 6) Notification letters addressed to the local units of state government.

Please note, the responses of the local units of state government and additional material were included in our November 15, 1994 transmittal.

We have completed our review and analysis of the request and the supporting documentation. The findings and recommendations to place the land into trust after satisfaction of all IGRA requirements are set forth in this memorandum for your approval or disapproval.

I. PROPERTY TO BE ACQUIRED

The property to be acquired is located at 2200 Carmichael Road in Hudson, Wisconsin, approximately one mile south of the Carmichael Road/Interstate "94" Interchange. The site consists of approximately 55.82 acres located in the fractional Northeast Quarter of the Northeast Quarter and Southeast Quarter of the Northeast Quarter, Section 6, Township 28 North, Range 19 West, City of Hudson, Saint Croix County, Wisconsin, described as follows:

The fractional Northeast Quarter of the Northeast Quarter of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional Northeast Quarter of the Northeast Quarter of said Section 6.

Also, that part of the Southeast Quarter of the Northeast Quarter of said Section 6 described as follows: Commencing at the Northeast corner of said Section 6; thence S02°49'01"W, 1,891.74 feet along the East line of the fractional Northeast Quarter of said Section 6 to the Northeast corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the Southeast Quarter of the Northeast Quarter of said Section 6; thence N02°48'30"E along the West line of said Southeast Quarter of the Northeast Quarter to the Northwest corner thereof; thence Easterly along the North line of said Southeast Quarter of the Northeast Quarter to the Northeast corner thereof; thence S02°49'01"W, along the East line of said Southeast Quarter of the Northeast Quarter to the point of beginning.

In June, 1991, the St. Croix Meadows Greyhound Racing Park opened on the site. The facility consists of a racing area, enclosed grandstand and clubhouse, kennels,

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and parking areas. The racetrack is open year round and has twenty kennels, each kennel having the capacity of housing up to 72 greyhounds each. The racetrack currently employs approximately 282 employees, including the food service employees. Prior to the construction of the racetrack, the site was used for agricultural purposes.

II. COMPLIANCE WITH LAND ACQUISITION REGULATIONS

25 C.F.R. § 151.10 identifies various factors which must be considered in all fee-to-trust acquisitions. Each factor for the placement of the St. Croix Meadows Property in trust for the three Tribes is discussed below:

- A. 25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority:

The Sokaogon Chippewa, Lac Courte Oreilles Chippewa and the Red Cliff Chippewa are all organized under the Indian Reorganization Act of 1934. Each tribe has requested to place the land in Hudson, Wisconsin, in trust for the benefit of all three Tribes under 25 U.S.C. § 465. The Bureau of Indian Affairs is authorized to process this application under 25 C.F.R. 151.3(a)(3) which states that land not held in trust may be acquired for a tribe in trust status when such acquisition is authorized by an act of Congress, and when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

- B. 25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land:

The trust acreage at the three tribal reservations totals 57,868.76 acres.¹ However, each of the Tribes lack an adequate land base to provide facilities for economic development. This is due to the fact that each of the three reservations is located in areas of Wisconsin which are remote from significant population centers.

The Tribes operate a total of five (5) gaming facilities within the exterior boundaries of the three reservations. To ensure the continuing stream of revenue necessary for tribal economic development, self-sufficiency and a strong tribal government, the Tribes must expand its gaming operations beyond the existing facilities. The

¹ The trust acreage is broken down as follows:
 Sokaogon Chippewa Community - 1,694.10 Acres
 Red Cliff Tribe - 7,881.12 Acres
 Lac Courte Oreilles Tribe - 48,293.54 Acres

purchase and placement into trust of St. Croix Meadows Greyhound Park is viewed by the Tribes as critical to their long-term economic benefit. The project would permit the tribal governments, as well as tribal members, to participate in the operation of a gaming facility in a large metropolitan market.

Only the Sokaogon Tribe distributes gaming revenue to tribal members in the form of per capita payments. As a result, the majority of net revenue generated by the proposed casino would be used to expand tribal social programs, tribal government operations and economic development activities well beyond the limits allowed by existing federal and state assistance.

C. 25 C.F.R. § 151.10(c) - The purpose for which the land will be used:

The Tribes intend to use the property for a Class III gaming facility. The Tribes have entered into an agreement with the current owners of the St. Croix Meadows Greyhound Park in Hudson, Wisconsin, to purchase the assets of the dogtrack. This track is located on the proposed 55.82 acres of trust land. Once the requirements of the Indian Gaming Regulatory Act of 1988 have been satisfied, and the land is placed into trust for the Tribes, casino type gaming will be added to the existing facility. No other use of the land is foreseen.

D. 25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls:

Notices of the proposed fee-to-trust conversion were sent to the Mayor of the City of Hudson, the Chairman of the City of Hudson, the Chairman of the St. Croix County Board of Supervisors, and the Chairman of the Town of Troy. The concerns not related to the removal of the property from the tax rolls that were raised by these local units of state government were fully addressed as part of the process under Section 20(b)(1)(A) of the Indian Gaming Regulatory Act of 1988 in the Recommended Findings of Fact and Conclusions prepared by the Minneapolis Area Director and sent to the Assistant Secretary-Indian Affairs on November 15, 1994.

Over 90 percent of the spending at the proposed Hudson gaming facility is expected to originate from outside the State of Wisconsin. The Hudson gaming facility is also expected to support 2,691 jobs and generate over \$56 million in annual earnings for residents of Wisconsin. Additionally, the Tribes, City of Hudson, and the County of St. Croix have entered into an *Agreement for Government Services*. Under this agreement the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other

services that are under the control of the city or county or are customarily provided to other commercial properties within the city or county.

Under the *Agreement for Government Services*, the Tribes will pay the city and county \$1,150,000 annually through 1998 to compensate for the services provided. Beginning in 1999, and for each year thereafter, the Tribes will increase the last annual payment by five (5) percent. Thus, the local units of state government should not be detrimentally impacted due to the removal of the land from its tax rolls.

E. 25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise:

1. Potential land use conflicts: According to the City of Hudson, the proposed trust site is zoned general commercial district for the principal structure and ancillary track, kennel and parking facilities. Six acres of the proposed trust site are currently zoned single family residence. The east, south and westerly perimeters are classified as on-family residential districts and serve as a buffer area between the track operation and other surrounding land uses.

The City of Hudson has also stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses. We conclude that there are no land use conflicts that would result from the acquisition of this land into trust status and its development as a gaming facility. In fact, the current plans do not require construction of any buildings for the addition of casino type gaming to the dogtrack facility. The remodeling of the existing building which already contains pari-mutuel dog racing is the only construction that will be necessary. As a result, no zoning conflicts are foreseen.

2. Jurisdictional issues: As trust land, the property would be considered "Indian Country" for jurisdictional purposes within the meaning of 18 U.S.C. § 1151. As a result, the United States would gain additional law enforcement jurisdiction in connection with the property. However, the local units of state government would have the primary law enforcement roll since the State of Wisconsin is a mandatory Public Law 280 State. The Tribes have agreed to pay for these services even though it is not required. Accordingly, jurisdictional conflicts should not present a significant obstacle to the proposed trust land acquisition.

F. 25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status:

The addition of this parcel of land to the jurisdiction of the Great Lakes Agency and Minneapolis Area Office will not result in a significant increase in workload because the Tribes will be managing the property as its own enterprise. Both the Agency and Area Office are currently sufficiently staffed so that any additional workload may be handled without the need for extra manpower or equipment.

III. NATIONAL ENVIRONMENTAL POLICY ACT

The transaction package has met compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.* The documentation in support of the acquisition includes a Finding of No Significant Impact (FONSI) signed by the Superintendent, Great Lakes Agency, on September 14, 1994. The FONSI is based upon an Environmental Assessment (EA) prepared by Mid-States Association, Inc. in 1988 for the St. Croix Meadows Greyhound Racing Facility and an Environmental Assessment Addendum to the EA prepared by Bischof & Vasseur in 1994. The addendum evaluates the potential impacts resulting from the proposed transfer of the site to be held in trust by the United States on behalf of the three Tribes and the remodeling of the existing Kennel Club Area to accommodate the addition of casino type gaming. The EA and addendum were reviewed by the Environmental Services Staff of the Minneapolis Area Office which found it to be adequate in scope and that its content supports the conclusions drawn.

A Notice of Availability for the addendum, Environmental Assessment and draft FONSI was published once in the *Hudson Star - Observer*, a weekly newspaper printed in Hudson, Wisconsin, on June 23, 1994.

IV. HAZARDOUS SUBSTANCES DETERMINATION

The hazardous survey form, *Level I Survey: Contaminant Survey Checklist of Proposed Real Estate Acquisitions*, was completed and certified by the Area Office Hazardous Waste Coordinator on November 18, 1994. The completion of the form indicates compliance with the required survey for hazardous substance on property to be acquired in trust and concludes that no contaminants are present on the property. The survey was also approved by the Minneapolis Area Director on November 18, 1994.

V. OTHER CONSULTATION/REQUIREMENTS

In addition to compliance with NEPA, the documentation provided as a result of the proposed construction of the dog track facility in 1988, supports a finding of compliance with other related requirements as indicated by the following correspondence:

archaeological sites: The Mississippi Valley Archaeology Center, Inc. stated that after archival review of available information at the University of Wisconsin - La Crosse and the State Historical Society of Wisconsin, there are no known archaeological sites in the proposed project area.

historic preservation: The State Historical Society of Wisconsin stated that there are no buildings in the study area that are listed in the National Register of Historic places.

endangered species: The Fish and Wildlife Service, Green Bay Field Office, Green Bay Wisconsin, provided a response dated January 9, 1989, concluding that no threatened or endangered species would be affected by the construction of the dog track facility.

other: The Addendum to the EA states that there are no anticipated impacts from the planned action on wetlands or surface water in the area. According to the National Wetlands Inventory map for the site, there are no designated wetland areas located on the site.

By letter dated January 3, 1989, the State of Wisconsin Department of Agriculture, Trade & Consumer Protection stated that there was no need for an agriculture Impact Statement as a result of the initial construction of the dogtrack. Additionally, since the planned action will utilize the existing racetrack facilities, it will not have a significant impact on prime or unique farmlands as described in the Farmland Protection Policy Act.

VI. RECOMMENDATION

It is our recommendation that after the requirements of the Indian Gaming Regulatory Act have been met, authorization should be provided to place the land into trust status for the benefit of the Tribes.

Lonnie Loman
Area Director

cc: Superintendent, Great Lakes Agency
Chairman, Lac Courte Oreilles Band
Chairman, Sokaogon Community
Chairperson, Red Cliff Band
✓ Bill Cadotte, Executive Mgmt. Services



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D. C. 20240



IN REPLY REFER TO:

BCCO 5730

MAR 02 1995

Honorable Steve Gunderson
House of Representatives
Washington, D. C. 20515-4903

Dear Mr. Gunderson:

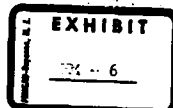
Thank you for your letter of December 29, 1994, addressed to Secretary Babbitt regarding a proposed casino at the St. Croix Meadows Greyhound Racing facility located in the State of Wisconsin. Your letter has been referred to this office for response.

You request clarification on whether or not the Bureau of Indian Affairs (BIA) considers the views of parties opposing a fee-to-trust acquisition by a tribe for gaming purposes. Because of the contentious nature of fee-to-trust acquisitions for gaming purposes, public sentiment and concerns of the negative impacts of casino gambling are two of several issues that are common. The Department of the Interior (Department) is sensitive to these issues. Consequently, we want to take this opportunity to assure you that comments opposing a fee-to-trust acquisition receive the highest consideration during the review process. However, it is important to point out that any opposition should be supported by factual documentation. If the opposing parties do not furnish any documented evidence to support their position, it is difficult, if not impossible, to make a finding that the acquisition is not detrimental to the surrounding community as required by the Indian Gaming Regulatory Act (IGRA), 25 U. S. C. §2719. The following discussion, albeit brief, is an explanation of the acquisition process for gaming purposes.

The application for this acquisition is currently under review by the BIA, Indian Gaming Management Staff (IGMS) office. The purpose of this review is to determine whether the requirements of Section 20 have been adequately addressed. If the application and supporting documentation are found to support a favorable determination by the Secretary of the Interior (Secretary), positive findings-of-fact on the two-part determination are prepared along with a letter to the Governor of the State seeking concurrence in the Secretary's determination.

The decision to place land in trust for the benefit of an Indian tribe is at the discretion of the Secretary and requires the applicant tribe to comply with the land acquisition regulations found in Title 25, Code of Federal Regulations (CFR), Part 151. When the acquisition is intended for gaming, the requirements of Section 20 of the IGRA, must also be considered, in addition to the requirements of 25 CFR 151. Additionally, the acquisition must be in compliance with the National Environmental Policy Act.

As a general rule, Section 20 prohibits any gaming on land acquired after October 17, 1988, the date of enactment of IGRA, unless an exception applies or the Secretary determines that the



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gaming facility on newly acquired land will be in the best interest of the tribe and its members, and will not be detrimental to the surrounding community, and, the Governor of the State concurs in the Secretary's determination.

The "consultation" with appropriate State, local government officials and officials of nearby tribes is conducted by the local BIA Area Office. Upon completion of the consultation, the BIA Area Office must prepare an administrative record containing a summary of the information and comments received during the consultation, factual findings and conclusion on both the negative and positive aspects of the tribe's proposal. The record is then submitted to the Assistant Secretary - Indian Affairs for further review and approval.

The review is conducted by the IGMS office and the Office of the Solicitor. The purpose of the review is to determine whether the requirements of Section 20 of IGRA have been adequately addressed. If the application is found to be factually documented to support a favorable determination by the Secretary, positive findings-of-fact on the two-part determination are prepared along with a letter to the Governor of the State seeking concurrence in the Secretary's determination.

The Secretary's determination does not constitute a final decision to acquire the land in trust under 25 CFR Part 151. This decision is made after the application is found to be in compliance with 25 CFR Part 151.

If Gubernatorial concurrence is provided, the land may be taken in trust for gaming purposes. At this point the tribe's application is then reviewed to determine whether the criteria of 25 CFR Part 151 have been adequately addressed. If Gubernatorial concurrence is not provided, the land cannot be taken in trust for gaming, but the tribe may ask that it be taken in trust for other non-gaming purposes.

As you can imagine, the decision to take land in trust for gaming purposes is made only after an exhaustive and deliberative review of all relevant facts and criteria. The process is often very lengthy and typically results in a large volume of information and documentation which is carefully reviewed by the office.

If you have further questions, please contact the IGMS office at [REDACTED] for more information.

Sincerely,

/s/ MELBA MANUEL

Melba Deputy Commissioner of Indian Affairs

bcc: George Skibine
Kevin Meisner



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240



BY EMAIL: 6/8/95 10:10 AM
Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff
From: Indian Gaming Management Staff *[Signature]*
Subject: Application of the Sokaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)¹

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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¹ References are to the application documents submitted by the Minneapolis Area Office.

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Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

- Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
- Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
- Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

- 1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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- 2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
- 3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
- 4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
- 5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**)
- 6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
- 7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
- 8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
- 9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
- 10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
- 11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
- 12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
- 13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
- 14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
- 15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
- 16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
- 17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
- 18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
- 19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab

***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 ... stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

Hudson Dog Track Application

County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment (\$150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 14% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to \$1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

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The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin

In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes

On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of \$450 million in 1993, and \$495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be \$114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were \$80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of \$480 million, a Non-Minneapolis Gaming Market of \$220 million, and a Wisconsin Market of \$500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

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Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over \$600 million.

The projected Hudson market share of \$80 to \$115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by \$50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% (\$25 million). Therefore, only \$5 to \$40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of \$1 to \$8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a \$96.8 million net profit in 1993. A reduction of \$8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At \$96.8 million, the per enrolled member profit at Mystic Lake is \$396,700. Reduced by \$8 million, the amount would be \$363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from \$25 million in 1995 to \$12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

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Market Saturation.

The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of \$500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts**1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY**

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers

The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime

Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

Hudson Dog Track Application

3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level

The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns

One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values

An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkad, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase

Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

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2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities

St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning

According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water

The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage

The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads

The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

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The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, "... it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

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Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects \$42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of \$18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS. COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay \$1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

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St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

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Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

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are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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Indian Gaming Management
MS-2070

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To: Assistant Secretary - Indian Affairs
Through: Deputy Commissioner of Indian Affairs
From: George T. Skibine
Director, Indian Gaming Management Staff
Subject: Application of the Sokaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)¹

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all

¹ References are to the application documents submitted by the Minneapolis Area Office.

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of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables. Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period was extended to April 30, 1995, by the Office of the Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of

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other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI
(Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

- 1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)
- 2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
- 3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
- 4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
- 5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**)
- 6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
- 7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
- 8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
- 9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
- 10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
- 11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
- 12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
- 13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
- 14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)

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- 15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
- 16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
- 17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
- 18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
- 19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab

***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in stating that "it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

No consultation with other State officials was solicited by the MAO. Shiela E. Marsdorf, State Representative, and twenty-eight other Representatives and State Senators sent a letter to the Secretary, dated March 28, 1995, expressing "strong opposition to the expansion of off-reservation casino-style gambling in the State of Wisconsin." The letter addresses four areas of detrimental impact.

First, the signatories cite the removal of land from the local property tax rolls. In the Findings of Fact, the MAO cites the Agreement for Government Services as evidence that the detrimental impact of placing land in trust has been mitigated. The applicant Tribes assert that the track will close, if it is not purchased by Indians, and all revenue to the local governments will cease, a potential detrimental effect of not acquiring the land in trust.

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Second, the representatives assert that "expansion of gambling is contrary to public will in Wisconsin." Elections in 1993 are cited in support. However, the 1993 referenda were primarily technical in nature, to bring the State constitution into conformance with the State-operated lottery. The representatives' letter states, "This advisory referendum showed strong support for limiting gambling to . . . dog tracks, state lottery games and existing tribal casinos." Public policy in Wisconsin embraces a State lottery and several types of Class III gaming.

Third, the letter says that off-reservation gambling may not foster economic development within the tribal nations. "People will be unwilling to travel long distances to casinos and bingo halls located in less-populous regions," says the letter. While the competitive impact of another casino is expected to affect existing Indian gaming operations, the three applicant Tribes are among those tribes in less-populous regions, who cannot draw significant customers from the market area of tribes with more urban locations. They seek to promote economic development by improving their business location.

Last, Representative Harsdorf states, "Many municipalities feel that the expansions have created tense racial atmospheres and that crime rates have increased. It is also unclear whether all tribes have benefitted from the IGRA." The Agreement for Government Services specifically addresses the impact of crime, and its mitigation. No information on racism or the disparate impact of IGRA is supplied. It is not clear that racism is impacted either by approval or disapproval of the application.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994

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Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

The Supervisors of the Town of Troy passed a resolution on December 12, 1994 in response to the Finding Of No Significant Impact (FONSI). The resolution restated the town's "vigorous objection to casino gambling at the St. Croix Meadows Facility," and reasserted "that casino gambling at the St. Croix Greyhound Racing Facility will be detrimental to the surrounding community." No evidence of detrimental impact was included in the resolution. The resolution was not submitted to the Department Interior in the application package, but was an attachment to a letter to the Secretary from William H.H. Cranmer, February 28, 1995. Neither the Town of Troy or Dr. Cranmer appealed the FONSI.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

Several thousand cards, letters, and petition signatures have been received in support of an Indian casino at the Hudson dog track.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that

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the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

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Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment (\$150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1 1/2% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all business-

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es, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to \$1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota

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casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin

In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes

On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of \$450 million in 1993, and \$495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be \$114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were \$80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market

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of \$480 million, a Non-Minneapolis Gaming Market of \$220 million, and a Wisconsin Market of \$500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over \$600 million.

The projected Hudson market share of \$80 to \$115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by \$50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% (\$25 million). Therefore, only \$5 to \$40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of \$1 to \$8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a \$96.8 million net profit in 1993. A reduction of \$8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At \$96.8 million, the per-enrolled member profit at Mystic Lake is \$396,700. Reduced by \$8 million, the amount would be \$363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. 1, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

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It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from \$25 million in 1995 to \$12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

Market Saturation.

The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of \$500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers

The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were

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received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime

Hudson Police Dept. Crime & Arrests, (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the St. Paul Pioneer Press with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell 3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level

The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns

One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

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IV. Property Values

An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase

Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500, and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters' estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than

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currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities

St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning

According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water

The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage

The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

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V. Roads

The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94. The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

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to Congressional subpoena3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects \$42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of \$18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

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Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay \$1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

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There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in

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reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto*

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giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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"PLEASE DELIVER TO ADDRESSEE IMMEDIATELY"

Telefax to:

July 14, 1995

**Heather Sibbison - IOS
Bob Anderson - SOL
Mike Anderson - DAS-IA
Hilda Manuel - DC of IA**

**Please review attached draft Hudson Dog Track letter
and return comments to Indian Gaming Management
Staff Office ASAP.**

**Phone: 219-4068
Telefax: 273-3153**

**For questions please contact Larry Scrivner at the above
number..**

Thanks,

— Tona R. Wilkins —



DRAFT

Honorable Rose M. Gurnoe
 Tribal Chairperson
 Red Cliff Band of Lake Superior Chippewas
 P.O. Box 529
 Bayfield, Wisconsin 54814

Honorable Alfred Trepania
 Tribal Chairperson
 Lac Courte Oreilles Band of Lake Superior
 Chippewa Indians
 Route 2, Box 2700
 Hayward, Wisconsin 54843

Honorable Arlyn Ackley, Sr.
 Tribal Chairman
 Sokaogon Chippewa Community
 Route 1, Box 625
 Crandon, Wisconsin 54520

Dear Ms. Gurnoe and Messrs. Trepania and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes. Following receipt of this recommendation and at the request of nearby Indian tribes, the Secretary extended the period for the submission of comments concerning the impact of this proposed trust acquisition to April 30, 1995.

The property, located in a commercial area in the southeast corner of the City of Hudson, Wisconsin, is approximately 85 miles from the boundaries of the reservations of the Tribes. One of the eight Wisconsin tribes (not including the three applicant tribes) are within the 100 mile radius used by the BIA to determine which tribes can be considered to be "nearby" Indian tribes.

Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community.

The decision to place land in trust status is committed to the sound discretion of the Secretary of the Interior. Our experience has been that most cases have presented issues of first impression and are defined by the unique or particular circumstances of the applicant tribe. To accommodate this diversity among applicants, each case is reviewed and distinguished on its own merits.

For the following reasons, we regret we are unable to concur with the Minneapolis Area Director's recommendation and cannot make a finding that the proposed gaming establishment would not be detrimental to the surrounding community.

The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to this trust acquisition for gaming purposes. In addition, in a March 28, 1995, letter, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District in whose district the St. Croix Meadows Greyhound Track is located, have expressed strong opposition to the proposed acquisition. The communities' and State officials' objections are based on a variety of factors, including increased expenses due to potential growth in traffic congestion and adverse effect on the communities' future residential, industrial and commercial development plans. Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

In addition, the record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin. Their opposition is based on the potential harmful effect of the acquisition on their gaming establishments. The record indicates that the St. Croix Casino, which is located within a 50 mile radius of the proposed trust acquisition would be impacted. And, while competition alone is generally not enough to conclude that any acquisition will be detrimental, in this particular case it is a significant factor. The Tribes' reservations are located approximately 85 miles from the proposed acquisition property. Rather than seek acquisition of land closer to their own reservations the Tribes chose to "migrate" to a location in close proximity to another tribe's market area and casino. Without question, St. Croix will suffer a loss of the market share and revenues. Thus, we believe the proposed acquisition would be detrimental to the St. Croix Tribe within the meaning of Section 20(b)(1)(A) of the IGRA.

We have also received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway and the potential harmful impact of a casino located one-half mile from the Riverway. We are concerned

that the potential impact of the proposed casino on the Riverway was not adequately addressed in environmental documents submitted in connection with the application.

Finally, even if the factors discussed above were insufficient to support our determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors, including the opposition of the local communities, state elected officials and nearby Indian tribes, to decline to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465, to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes. This decision is final for the Department.

Sincerely,

Deputy Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
National Indian Gaming Commission

DRAFT

bcc: Secy Surname, Secy RF(2), 101-A, Bureau RF, JDuffy, SOL-IA, AS-IA, 100,
Surname, Chron, Hold
BIA:GSKibine:trw:7/3/95:219-4068 wp:a:hudson.ltr.
rewrite GSKibine:7/8/95
rewrite per HSibbison:trw:7/11/95
rewrite per HManuel:trw:7/14/95

STRAIGHT LINE DISTANCES FROM HUDSON TO WISCONSIN INDIAN TRIBES

Applicant Tribes:

Soksogon	188 miles
Lac Courte Oreilles	85
Red Cliff	165

Other Tribes:

St. Croix	45
Ho-Chunk	114
Bad River	138
Lac du Flambeau	155
Menominee	185
Stockbridge-Munsee	186
Potawatomi	202
Oneida	220

HM document # 14

Author: George Skibine at -IOSIAE
 Date: 17 MAR 1997 4:51 PM
 Priority: Normal
 Receipt Requested

Rilda Manuel at -HAKKAP_Mail, Robert Anderson at -IOS, Heather Sibbison at -IOS,
 Michael Anderson at -HAKKAP_Mail, Scott Keep at -ISOL, Dave Scheridge at -ISOL,
 Tom Hartman, Nancy Pietskalla
 Subject: HUDSON DOG TRACK

On Monday, March 17, 1997, at 2:00 PM, we had a conference call with plaintiffs and their attorneys to discuss the terms of any resubmission of their application to take land in trust in Hudson, Wisconsin, for gaming. One of the terms for consideration of a resubmitted application would be that the BIA Minneapolis Area Office would redo the consultation with nearby tribes and the surrounding communities.

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Plaintiffs informed us that a pivotal question in their decision to resubmit an application is whether the Department will again stand by its position that the "naked" political opposition of the surrounding communities without factual support is enough for the Secretary to refuse to make a finding that the proposed acquisition is not detrimental to the surrounding community. If that is the case, they indicated that they are not willing to spend time and money on this exercise, since they are fairly certain that the two communities have not changed their mind. i.e., They need to know whether this political opposition is or is not rebuttable by the tribal applicants.

We told them that we would confer with policy makers within the Department and let them know the outcome. We would like to discuss this issue at the 2:00 PM Wednesday gaming meeting, if possible. I think that it is a fair question for plaintiffs to ask. GTS





United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20540IN REPLY REFER TO
Local Statute
Technical Services

MAY 22 1998

Memorandum

To: Ada H. Dear
Assistant Secretary - Indian Affairs

From: Deputy Commissioner of Indian Affairs

Subject: Request by the Mashantucket Pequot Indian Tribe of
Connecticut for Fee-to-Trust Acquisition of approximately
165 Acres, More or Less, Contiguous to Their Reservation

We have reviewed the Eastern Area Director's January 27, 1998 memorandum transmitting the subject request for a fee-to-trust acquisition for the Mashantucket Pequot Indian Tribe of Connecticut. The request was submitted to this office pursuant to Central Office memorandum dated May 26, 1994. Because of the political opposition, the Eastern Area Director deemed it prudent to submit the application to Central Office for review.

The subject lands are outside the Pequot Tribe's Settlement Area and consist of five (5) undeveloped lots containing approximately 165 acres, which are contiguous to the reservation boundary. The parcels are divided because they cross town boundaries. Lot 58 is in Stonington and Lot 30 is Lot 3 in Stonington. The parcels are described as follows:

Initially, the Tribe's request included another lot, Lot 110, which consisted of 82.09 acres within the towns of Ledyard and Groton, Connecticut. However, on December 8, 1995, the Tribe withdrew its request that this lot be taken into trust. Resolution Number 122994-87 of 89 of the Mashantucket Pequot Tribal Council approved the withdrawal of Lot 110 from the Tribe's land acquisition request because it was discovered that Lot 110 had been purchased with funds provided by the Connecticut Indian Land Claims Settlement Act. That Act provides that lands purchased by the Tribe with funds provided by the Settlement Act and located outside of a certain boundary known as the Settlement Boundary may not be taken into trust and must be held in fee. Thus the Department may not accept Lot 110 in trust for the Tribe.



Lot #101	Town of North Stonington	10.50 acres
Lot #3	Town of North Stonington	69.00 acres
Lot #20	Town of Ledyard	24.10 acres
Lot #88	Town of Ledyard	27 + acres
Lot #72	Town of Ledyard	14.78 acres
Lot #76	Town of Ledyard	2.48 acres
Lot #82	Town of Ledyard	15.50 acres

all in New London County, State of Connecticut.

The tribe's request is made pursuant to Tribal Council Resolution Nos. 010693-01, 010693-02, 010693-03, 010693-04, 010693-05, and 010693-08 enacted January 6, 1993.

The factors in 25 CFR 151.10 used to evaluate this request are:

151.10(a) . . . Statutory authority for this acquisition in trust is Section 3 of the Indian Reorganization Act (IRA) of June 18, 1934 (40 Stat. 384, 25 U.S.C. § 465). We note that the Mashantucket Pequot Indian Claims Settlement Act of October 18, 1983 (Settlement Act) (Pub. L. 98-134, 97 Stat. 853) established a settlement area of approximately 3,260 acres for the tribe. On January 28, 1988, the Southeast Regional Solicitor concluded that the Bureau of Indian Affairs did not possess authority to accept trust conveyances of land acquired by the Mashantucket Pequot Tribe outside of this settlement area. However, on May 30, 1990, the Southeast Regional Solicitor modified his opinion. The 1990 opinion concluded that the Settlement Act did not restrict the application of 25 U.S.C. § 465 to lands acquired by the tribe outside of its settlement area when such lands are acquired with monies derived from sources other than Settlement Act trust funds. We agree with the Southeast Regional Solicitor's May 30, 1990, opinion. Accordingly, lands acquired by the Mashantucket Pequot Tribe outside of its settlement area, with funds other than Settlement Act funds, may be transferred into trust status. The Bureau, acting upon the Secretary's delegated authority, may accept such trust conveyances. Since the 163 acres at issue were not purchased with Settlement Act funds, these lands may be converted to trust status.

Regulatory authority is 151.2(a)(1) ". . . when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area."

151.10(b) . . . The tribe contends that the land authorized to be held in trust for their benefit under the Settlement Act is not adequate to meet the present and future needs of the tribe. About 1,600 acres, categorized as wetlands and rocky ledges typical of the

area, are unsuitable for development. The tribe acquired approximately 1,229 acres in trust status within the settlement area, however, a substantial portion (approximately 679 acres) is unsuitable for development. Property that is suitable for development within the settlement area is owned by nontribal interests, and/or has already been developed. Land needed to support the tribe's social, cultural and economic development needs have forced the acquisition of land outside the settlement area.

151.10(c) . . . Subject property is very rocky, steep and suitable for little or no development. The southern portion of Lot 76 has been cleared and has had a single family home on it for many years. Lot 181 also has a single family dwelling. The lower portion of Lots 73 and 82 are being used for a temporary overflow parking lot for the tribe's casino. A new two million gallon concrete water tank was installed on Lot 3 by the tribe to supply water to the casino and reservation. There is also a gas main running across the property which provides service to the casino complex as well as to the rest of the reservation. According to the transmittal memorandum of January 27, 1993, the tribe plans to keep the property in its present undeveloped state for use as a barrier to commercial development. The tribe contends that the use proposed would benefit the surrounding community by creating a "green space" between the tribal lands and the outlying communities. However, the Environmental Assessment states that the tribe plans to open a four-acre permanent casino parking lot on the property, with improvements such as paving, lighting, drainage, and landscaping.

151.10(e) . . . On February 23, 1993, the Towns of Ledyard and North Stonington were notified of the proposed trust acquisition. The State of Connecticut was notified on March 19, 1993. Seventy-nine letters were received from residents of Stonington/North Stonington, sixty from residents of Ledyard, eleven from residents of Preston, and four from nonresidents of the affected towns expressing concerns about the Pequot's application for trust status. Many letters opposing the granting of trust status were received from the public at large and from legislators (both state and federal).

The Towns of Ledyard, North Stonington, and Preston submitted a "Statement of Reasons in Support of Request to Reject the Application for Acquisition of Lands in Trust for the Benefit of the Mashantucket Pequot Tribe" dated July 15, 1993. The reasons stated are: (1) failure of the tribe to take constructive steps to address local concerns; (2) insufficiency of the tribe's application;

(3) continuation of tribal land acquisition activities; (4) substantive deficiencies of the tribe's application; and (5) evidence of environmental impacts of trust acquisition.

A meeting was held at the Eastern Area Office on May 10, 1991, with the attorneys representing the towns in opposition to the tribe's request for trust status. This meeting resulted in an identification of the major concerns of the towns, which are: (1) the loss of control over the land because the tribe will not have to comply with zoning regulations; (2) the rural nature of the area will be changed because of the changing commercial nature of the land use; (3) concern over the loss of "revenue" tax base; (4) fear and/or concern of the tribe being in control over the "lands" within the towns and a bias against the tribe; (5) the potential for increased crime because of influx of people into the area; and (6) a desire to limit how much land the tribe may acquire and place into trust status within the local communities.

Under the guidance of the Office of the Secretary, the tribe and the towns engaged the services of a mediator, the Conflict Management Group (CMG) of Boston, Massachusetts, to seek a compromise position on the issues. Unfortunately, the effort was unsuccessful because the towns were unable to commit to an agreement without a referendum. The tribe has taken the position that the exercise of the Secretary's discretionary authority to acquire land in trust status is not subject to a public referendum.

The infra-structure and economic development projects taking place on the reservation have produced an annual construction payroll of approximately forty million dollars. The Foxwoods Casino employs approximately 9,500 people with an annual payroll in the vicinity of two hundred million dollars. Most of these employees live locally, including several hundreds in the towns of North Stonington and Ledyard. Each employee receives an excellent benefit plan, including full medical, dental, eye care, and pharmaceutical benefits. The current projects more than offset any tax loss with an incalculable "spin-off" to local businesses generated by the tribe's economic development activities.

The tribe contends that the removal of the land from the county tax rolls will not have an immediate detrimental impact on the local governments because it has been undeveloped for over a century due to the limited suitability of the property for development, the lack of infrastructure to support development, and local zoning

regulations. Annual taxes paid to the Town of Ledyard for the prior taxable year on this property was \$10,053, approximately 1/28th of one percent of the town's budget. The total amount of taxes due to the Town of North Stonington was \$6,883.48, constituting well under one percent of each town's budget. Local governments are concerned that continued expansion of the tribal land base would deprive the local governments of a significant tax base in the future. The tribe recognizes the local governments' concerns and worked with elected officials to mitigate the loss of the tax base. The tribe has offered to make payments in lieu of taxes and is prepared to establish a trust fund for the towns in amounts that would offset tax losses because of the conversion of the land into trust status. However, the towns refused to accept a negotiated amount to offset this loss as well as a tribal offer to improve the roads surrounding the tribal gaming establishment. The Town of Ledyard increased the assessment of this undeveloped property to approximately \$30,000 which was effective July 1993. This increased assessment is contested by the tribe.

The tribe has not requested that their hotel (adjacent to the settlement area) be placed into trust. This results in the payment of \$600,000 per year in property taxes to the Town of Ledyard, making the tribe the second largest taxpayer in the town.

181.10(f) . . . Over one hundred form letters of protest were received, while petitions with approximately 10,000 signatures were filed in support of the expansion of the tribe's land base.

These letters of protest can be categorized into the following concerns:

1. loss of control over the land because the tribe will not have to comply with zoning regulations;
2. the rural nature of the area will be changed because the use is changing; (Note: lands in the Town of Ledyard are presently zoned for commercial use.)
3. loss of "revenue" tax base; (Note: the towns refused to accept a negotiated amount to offset this loss as well as the offer to improve roads around the gaming establishment.)
4. fear and/or concern of the tribe being in control over lands within the towns and a bias against the tribe;

5. the potential for increased crime because of the influx of people into the area; and
6. the desire to limit how much land the tribe may acquire and place into trust status within the local communities.

Local governments have expressed concern that planned development will change the residential character of the area and will not be regulated by the local zoning commission and environmental laws if the land is granted trust status. The surrounding towns are traditionally called "bedroom" communities with minimal industrial/commercial development and limited to service-type businesses and small agriculture uses. It is this rural atmosphere that some of those in opposition wish to preserve and feel threatened by the Mashantucket Pequot's Casino and Resort project. The tribe contends that the proposed buffer zones will accomplish this desired limitation to development, development has not occurred on the subject parcels for an extended period, and the tribe will be subject to all Federal laws applicable to trust lands including environmental laws if trust status is granted.

The only impact anticipated is on the roads system. However, it is anticipated that the impact will be an improvement rather than a detriment to the local community by eliminating the problems of casino patrons parking along the road. Also, the tribe volunteered to improve the road system surrounding the casino.

The Settlement Act grants civil and criminal jurisdiction to the State of Connecticut. However, since these parcels are outside of the settlement area and being converted into trust under the authority of the IRA, we see no need to grant jurisdiction to the state.

151.10(g) . . . The acceptance of the subject parcels into trust for the Mashantucket Pequot Tribe will have minimal impact on the responsibilities of the Bureau of Indian Affairs. The tribe already operates Pub. L. 93-638 programs which provide the bulk of the services to tribal members at this date.

Although the tribe has specified its intended use for the subject property, an approximate four acre parking lot and the remaining acreage as a "green space", in an effort to ensure that any future development is adequately addressed, the Mashantucket Pequot Tribal Council passed Ordinance No. 841295-01 establishing certain procedures and regulations concerning the 267 acres. Said procedures are as follows:

1. Upon the acceptance of the said 247 acres in trust on behalf of the United States for the benefit of the tribe the following use regulations shall apply:
 - A. The tribe may continue to use the 247 acres for existing uses, which include a parking lot, a water tower, certain roads, a natural gas tap and line, and a residence;
 - B. These uses shall continue in accordance with the Environmental Assessment conducted by the NIA as part of its review of the tribe's application and its FONSI.
 - C. At such time as the tribe shall propose any use of the 247 acres in addition to those described above, such proposed additional use shall be subject to the approval of the Secretary pursuant to the following procedures:
 - (i) The tribe shall submit a proposed amendment of the Ordinance to the Secretary describing in detail the proposed additional use.
 - (ii) The tribe shall provide any and all information necessary to cause a new EA to be made of the proposed additional use.
 - (iii) It is agreed that if the Secretary determines within 60 days after the completion and submission of the results of the EA that an Environmental Impact Statement (EIS) be required on the proposed additional use, the tribe shall cause an EIS to be conducted in accordance with the applicable standards of the National Environmental Policy Act.
2. The Mashantucket Pequot Tribe shall make a payment in lieu of taxes on the land being taken into trust to the Towns of Ledyard and North Stonington equal to the taxes due on the Tax List of October 1,

1994, which tax bills are due and payable in July of 1995. Commencing July 1996, the tribe shall pay to each of the towns, an amount equal to the taxes which were due and payable in July 1995, together with a percentage increase or decrease, whichever the case may be, equal to the increase or decrease in the total taxes that are due and payable to the respective town for all properties in July 1996 as it relates to the amounts due in July 1995. The tribe shall make this payment in lieu of taxes annually to each town in July of each and every year thereafter at the July 1995 level increased or decreased by the percentage increase or decrease for the given year over those total taxes due in July 1995. In the event that the taxes payable as of July 1995 have not been established because of the existence of an appeal or other challenge to the amount, the taxes that are finally found as a result of said appeal to be due and payable with regard to the applicable property will be paid.

3. In the event the tribe fails to make the payment required herein, the tribe waives its sovereign immunity for the sole and limited purpose of permitting the towns to bring legal proceedings to collect the amount due under this paragraph 2.
4. Any amendment to the Ordinance will not be effective without consent of the Secretary of the Interior."

A Hazardous Materials Survey was completed and approved April 14, 1995. No contaminants were found on the property. The regulations contained in NEPA have been met with an Environmental Assessment (EA) completed in June 1993, and revised on April 21, 1995. Two archaeological sites have been identified and are located a couple hundred feet in from Route 2 on either side of the property line dividing Lots 61 and 72. The Tribal Council has approved the excavation of these sites and has directed that they not be disturbed. It is a standing policy that land is not developed or otherwise disturbed until an archaeological survey has been completed. This transaction will have no effect on historic, architectural, or archaeological resources on, or eligible for, the National Register of Historic Places. There are no threatened or endangered species or critical habitats. None of the existing or planned uses for the property will be on or affect any existing wetlands. There will be no adverse effect on public health and safety by taking the six parcels into trust. In fact, due to current traffic problems caused by insufficient parking, public safety will be improved by the speedy recreation of additional parking for the casino.

In conclusion, we believe that the tribe has made a good faith effort to resolve the conflicts between the towns and the tribe. Their offer to make payments in lieu of taxes to the towns and to improve the roads which surround the tribal gaming establishment was refused. The Town of Ledyard increased the assessment of property taxes from \$10,093 to \$80,000 in July 1993. The tribe naturally contested such an unreasonable increase. The tribe passed an Ordinance requiring approval of the Secretary for any proposed changes and to make payment in lieu of taxes on the said property. It is apparent to us that the towns do not wish to cooperate with the tribe in its efforts to improve self-determination or economic development. Historically, the non-Indian population of Connecticut has opposed any land acquisition by a tribe. We feel that the tribe has tried to cooperate with the non-Indian communities and that we should consider the benefits to the tribe.

We believe the acquisition is in the best interest of the Mashantucket Pequot Indian Tribe of Connecticut and concur with the Eastern Area Director's decision that the acquisition be processed for approval. We also find that the acquisition qualifies for conversion to trust status pursuant to the provisions of the Act of June 18, 1936 (48 Stat. 984, 25 U.S.C. § 465).

Therefore, we recommend approval of the subject property to the United States of America in trust for the Mashantucket Pequot Indian Tribe of Connecticut, subject to the satisfaction of all title requirements pursuant to 25 CFR 151.12. Attached is the notice of final agency action for your signature.

CONCUR:

I have reviewed the foregoing recommendation memorandum and concur with the findings.

Ada E. Deer
 Ada E. Deer
 Assistant Secretary - Indian Affairs

5-22-96
 Date

(4310-02)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR 151 Land Acquisitions

Bureau of Indian Affairs, Interior

ACTION: Notice of Final Agency Determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Assistant Secretary - Indian Affairs made a final decision to acquire approximately 165 acres of land into trust for the Mashantucket Pequot Indian Tribe of Connecticut on MAY 22 1996. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary - Indian Affairs by 209 DM 8.3A.

FOR FURTHER INFORMATION CONTACT: Alice A. Harwood, Bureau of Indian Affairs, Division of Real Estate Services, Chief, Branch of Technical Services, MS-4522/NIR/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208-7737.

SUPPLEMENTARY INFORMATION: The Department of Interior established a procedure to ensure the opportunity for judicial review of administrative decisions to acquire title to lands in trust for Indian tribes and individual Indians under section 5 of the Indian Reorganization Act (IRA) (Public Law 73-383, 48 Stat. 984-988, 25 U.S.C. 463 and other federal statutes). This notice is issued according to the Final Rule establishing a 30-day waiting period after final administrative decisions to acquire lands into trust. The Final Rule was published in the Federal Register on April 24 1996, 61 FR 20 18082-83, 25 CFR §151.12(b). On MAY 22 1996, the Assistant Secretary - Indian Affairs decided to accept approximately 163 acres of land into trust for the Mashantucket Pequot Indian Tribe of Connecticut. The Secretary shall acquire title in the name of the United States in trust for the Mashantucket Pequot Indian Tribe for the five tracts of land described below no sooner than 30 days after the date of this notice.

New London County, Connecticut

Lot #101	Town of North Stonington
Lot #3	Town of North Stonington
Lot #30	Town of Ledyard
Lot #88	Town of Ledyard
Lot #72	Town of Ledyard
Lot #76	Town of Ledyard
Lot #82	Town of Ledyard

title to the land described above will be conveyed subject to any valid existing easements for public roads, highways, public utilities, pipelines, and any other valid easements or rights-of-way now on record.

Ada E. Deer
 Ada E. Deer
 Assistant Secretary - Indian Affairs

5-22-96
 Date

Author: George Skibine at -IOSIAE
 Date: 7/8/95 5:36 PM
 Priority: Normal
 Receipt Requested
 TO: Miltona R. Wilkins
 TO: Tom Hartman
 TO: Paula L. Hart
 TO: Tina LaRocque
 Subject: Hudson Dog Track

----- Message Contents -----

I have left on Tona's desk the redrafted version of the Hudson letter, per Duffy and Heather's instructions, along with the disk I used. Please make sure it is put in final form, and brought up to Heather first thing on Monday. Please have copies made for Bob Anderson, Kevin ~~Froy~~ and Hilda. The Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes Area. Also, give Larry a copy of this message, and tell him to contact Tom Sweeney and keep him advised of any development on Hudson letter. I do not have a copy of the original Hudson letter draft, because it is no longer on my disk (George Skibine Docs). However, I cc: mailed that document to some of you and to SOL if it needs to be retrieved.



[The deposition of Kevin Meisner follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: KEVIN MEISNER

FRIDAY, JANUARY 16, 1998

The deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 10:15 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Robert J. Dold, Jr., Investigative Counsel; E. Edward Eynon, Investigative Counsel; Michael J. Yeager, Minority Counsel; and Sara Depres, Minority Counsel.

For MR. MEISNER:

TIMOTHY S. ELLIOTT, ESQ.
Deputy Associate Solicitor-General Law
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Mr. DOLD. On the record. Good morning, Mr. Meisner. On behalf of the members of the Committee on Government Reform and Oversight, I appreciate and thank you for appearing here today. This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and a notary public. I will now request that the reporter place you under oath.

THEREUPON, KEVIN MEISNER, a witness, was called for examination by counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. DOLD. I would like to note for the record those who are present at the beginning of this deposition. I am Bob Dold, designated Majority counsel for the committee. I am accompanied today by Teddy Eynon, who is also with the Majority. Mr. Mike Yeager is the designated Minority counsel, and he is accompanied today by Sara Depres. Mr. Meisner is accompanied today by Mr. Tim Elliott.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or a court of law. If I ask you about a conversation you have had in the past and you are unable to recall the exact words used in the conversation, you may state that you are unable to recall the exact words and then you may give me the gist or the substance of any such conversation to the best of your recollection. If you recall only part of a conversation or only part of an event, please give me, to the best of your recollection, those events or parts of conversations that you do recall.

The Majority and Minority committee counsels will ask you questions regarding the subject matter of the investigation. Minority counsel will ask questions after Majority counsel is finished. After Minority counsel has completed questioning you, a new round of questions may begin. Members of Congress who attend today's proceeding will be afforded an immediate opportunity to ask questions, that is, if they attend, and I have not heard that any of them are planning to attend today, but if they should, they will be afforded an immediate opportunity. When they have completed their questioning of you, committee counsel will resume questions where we left off.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the deposition shall be stated for the record. If the witness is instructed not to answer a question or otherwise refuses to answer a question, Majority and Minority counsel will confer to determine whether an objection is proper. If the Minority and Majority counsels agree that a question is proper, the witness will be asked to answer the question. If an objection is not withdrawn, the Chairman or a Member designated by the Chairman may decide whether the objection is proper.

This deposition is considered as taken in executive session of the committee, which means that it may not be made public without the consent of the committee pursuant to clause 2(k)(7) of House Rule XI. We ask you to abide by the rules of

the House and not discuss with anyone, other than your attorney, this deposition and the issues and questions raised during its proceeding.

Finally, no later than 5 days after your testimony is transcribed and you have been notified that your transcript is available, you may submit suggested changes to the Chairman. The practice has been that depositions have been available fairly quickly afterwards, and in this case we will make sure that that transcript is available for Mr. Elliott and have him or us, whatever the case may be, get that up to you as soon as possible, within at least a day or two.

Committee staff may make any typographical and technical changes requested by you. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by you must be accompanied by a letter requesting the changes and a statement of your reasons for each proposed change. A letter requesting any substantive changes must be signed by you. Any substantive changes shall be included as an appendix to the transcript conditioned upon your signing of the transcript.

Do you understand everything we have gone over so far?

The WITNESS. Yes.

Mr. DOLD. Do you have any questions about anything that we have gone over?

The WITNESS. No.

Mr. DOLD. Mr. Meisner, if you don't understand a question, please say so and I will repeat it or rephrase it so that you understand the question. Do you understand that you should tell me if you do not understand my question?

The WITNESS. Yes.

Mr. DOLD. The reporter will be taking down everything we say and will make a written record of the deposition. You must give audible, verbal answers, because the reporter cannot record what a nod of the head or a gesture means. Do you understand that?

The WITNESS. Yes.

Mr. DOLD. If you can't hear me, please say so and I will repeat the question or have the court reporter read the question back to you. Do you understand that?

The WITNESS. Okay. Good.

Mr. DOLD. Your testimony is being taken under oath as if we were in court, and if you answer a question, it will be assumed that you understood the question and the answer was intended to be responsive to it. Do you understand that?

The WITNESS. Yes.

Mr. DOLD. I understand that you're here voluntarily today, and I thank you very much for that.

Mr. Elliott, do you have a statement?

Mr. ELLIOTT. Yes.

Mr. Meisner is here, as you stated, voluntarily. He is not an employee of the Department of the Interior; he is a former employee there. He used to be in the solicitor's office and was a member of the solicitor's office at the time of the Hudson Dog Track decision.

That being the case, he is privy to information and has legal opinions which are the subject of attorney-client privileges, as well as perhaps attorney work product privileges, and we would request that you not, in view of the fact that much of what he may know about is now in litigation, and there have been representations prior to today that counsel does not wish to get into the litigation that is ongoing at this time. We would ask that you not attempt to delve in his thought processes which relate to privileged information such as his legal opinion. If you do, we will work that out at the time that you get into that. However, I intend to object in order to preserve the privilege for the Department of the Interior and the United States in this litigation.

One bit of logistics, as we have done in the last two depositions, we intend to finish up at 3 o'clock this afternoon. We would like to take a half-hour, 45 minute lunch break sometime around noon, whenever it is convenient for you, and then finish up at 3 o'clock.

Mr. YEAGER. On behalf of the Minority, I would like to thank you for appearing voluntarily today.

My understanding from counsel's representations in the past is that the committee is not interested in the litigation, and my understanding is that questions will not go to the litigation. Am I correct in that assumption?

Mr. DOLD. Let me again state on the record for this deposition as I have in past depositions, that the committee is not interested whatsoever in the ongoing litigation in Wisconsin. We are interested in the Hudson Dog Track matter as it pertains to our investigation. I will leave it at that.

Mr. YEAGER. Before we begin, I would just like to lodge an objection to this deposition, as we have lodged with respect to every deposition on the Hudson casino

matter. The Senate Governmental Affairs Committee has conducted an investigation of the matter and conducted public hearings. The Justice Department is investigating the matter. We understand the Committee on Resources has also commenced a separate inquiry into the Hudson Dog Track matter, and it seems to the Minority that this is an entirely duplicative and unnecessary enterprise. On behalf of the Minority, I would like to apologize to you for the inconvenience of appearing here today. So rather than object throughout the deposition, I would just like to put that on the record now.

EXAMINATION BY MR. DOLD:

Question. Mr. Meisner, can you please state and spell your name for the record?

Answer. Yes. My name is Kevin Widlus Meisner. Did you ask me to spell it?

Question. Please.

Answer. K-E-V-I-N, W-I-D-L-U-S, M-E-I-S-N-E-R.

Question. And can you give me a brief employment history of jobs you have held?

Answer. Sure. I graduated from law school in 1990. From law school, I worked for the Paucatuck Eastern Pequot Indian tribe, P-A-U-C-A-T-U-C-K, in North Stonington, Connecticut. I worked there from the fall of '90 after I passed the bar exam until the fall of 1991.

In November of 1991, I took a position in the Office of Solicitor, division of Indian Affairs, and held that position until May of 1996. I worked in two branches in the Indian Affairs division. The first branch was the branch of Tribal Government in Alaska, and the second branch was the branch of Environment, Lands and Minerals.

In May of '96, I went to the National Indian Gaming Commission, and I was there until October of '97, and from October of '97 to the present, I'm counsel for the Mohegan Tribe, also in Connecticut.

Question. And where did you attend college?

Answer. George Washington University, 1985—excuse me, I think 1984 to '87. Prior to that, Penn State University, starting in 1982, 1982 to 1984.

Question. And law school was where?

Answer. Case Western Reserve University in Cleveland.

Question. Mr. Meisner, who did you meet with to prepare for this deposition?

Answer. Tim Elliott.

Question. Anyone else besides Mr. Elliott?

Answer. Art Gary.

Question. Art Gary?

Answer. Yes.

Question. Who is Art Gary?

Answer. Art Gary is one of Tim Elliott's staff members. He's an attorney.

Question. What is their role, what do you perceive their role to be in this deposition today?

Answer. The solicitor's office represents the interests of the Department of the Interior. And myself, to the extent that I was an Interior employee, and not beyond that.

Question. Did you review documents with them?

Answer. Yes.

Question. Have you reviewed your documents pursuant to our subpoena, or the documents pursuant to our subpoena at all, relevant records?

Answer. No.

Question. Were you ever asked by the Department of Interior to provide any records that you might have in your personal possession?

Answer. Yes.

Question. Did you provide such records?

Answer. No.

Question. Do you have records in your personal possession?

Answer. No.

Question. Did you keep regular notes of meetings you had at the Department of Interior?

Answer. Yes.

Question. Did you keep regular calendars?

Answer. I kept a desk calendar.

Question. And when you say you kept a desk calendar, how did you keep the notes and your desk calendar? Did you take those with you when you left the Department?

Answer. No.

Question. Is there a process at the Department of the Interior for what you do with those? Do they go in a file?

Answer. Circular file. In other words, I threw them out.

Question. Did you keep e-mails?

Answer. No.

Question. Did you go over any testimony of any other witnesses in this matter with Mr. Elliott or anyone in the solicitor's office?

Answer. No.

Question. Do you know if there's been any discussions of any possible conflicts that the solicitor's office may have in representing any particular Interior Department witness?

Answer. No.

Question. Have you discussed this deposition with anyone besides Mr. Elliott and Art Gary?

Answer. What do you mean?

Question. Have you discussed the substance of the deposition with anybody that you were going to testify?

Answer. I have told people that I was going to testify. I have not, to my recollection, discussed the substance of this matter except to the extent that, like I said to you on the telephone, that I don't really know anything, but I haven't talked to anybody about anything other than that, to the best of my recollection.

I was contacted by Penny Coleman, who was my former supervisor. They were trying to find me. I believe the solicitor's office contacted Penny, and so we talked about the fact that I would be here. We specifically did not talk about the substance.

And then I spoke with George Skibine, and in the room with George Skibine was Paula Hart and Troy Woodward. I was on a speakerphone. I talked to them about the fact that I was coming here. We did not—I don't remember talking about any substance with them beyond saying that I don't know anything and wasn't really sure what this was all about.

Question. What was the conversation you had with Mr. Skibine, Paula Hart and Troy Woodward on the speakerphone? When was that conversation?

Answer. Maybe it was 3 or 4 weeks ago, as I recall. It may have been 5 weeks ago.

Question. And what was the substance of that conversation?

Answer. We had been playing phone tag trying to get information about where I was to people, and so I had called Tim Elliott and Art Gary, and in the course of trying to get my information to folks, I called George Skibine. It took him a couple weeks to get back to me, and I believe I gave him also the information about how I could be found. I also had tried to contact Heather Sibbison, but was unable to contact her. So I think it was mostly I told them where I was.

George told me that basically he had been through the ringer. Didn't tell me any substance or what had happened, but that he had been called to testify on several occasions, and I think he stated that I was lucky to have avoided it to this point. But in terms of the actual decision or any substance, I don't remember any conversation on that.

Question. Did you have any other conversations with anyone else besides Mr. Skibine, Ms. Hart and Mr. Woodward, and Mr. Elliott and Mr. Gary?

Answer. Not to my recollection.

Question. Has anybody from the Department of Justice spoken with you about the Hudson Dog Track matter? Just for the record, when I say the Hudson Dog Track matter, that's going to be my shorthand for the fee-to-trust application in Wisconsin.

Mr. ELLIOTT. You mean recently, but not in connection with the litigation? You mean recently, but not in connection with the litigation?

Mr. DOLD. What do you mean by recently? I'm talking about the 1990—

Mr. ELLIOTT. Give him a time frame as to when you're talking about.

Mr. DOLD. Okay, sure.

EXAMINATION BY MR. DOLD:

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter within the last 6 months?

Answer. No.

Question. Had?

Answer. Not—I can't remember any conversations with anybody at the Department of Justice in the last 6 months.

Question. Did you speak with anybody at the Department of Justice about the Hudson Dog Track matter at all, at any time?

Answer. I don't recall.

Question. Apart from this deposition in arranging the logistics of the deposition, have you spoken with any congressional personnel about the Hudson casino matter?

Answer. No.

[Meisner Deposition Exhibit No. KM-1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

Mr. DOLD. I have placed before Mr. Meisner what has been marked as KM-1. It is the statement of the Secretary of the Interior, Bruce Babbitt, before the Senate Committee on Governmental Affairs, October 30, 1997. I will allow you an opportunity to read it, but I only have a specific question on page KM-2.

The WITNESS. Do you want me to read the entire document, or do you want me to—

Mr. DOLD. It's not necessary, but I will certainly afford you the opportunity to if you'd like to.

Mr. ELLIOTT. He just has one question, right?

Mr. DOLD. Yes.

Mr. ELLIOTT. He is going to ask you a question on this page.

The WITNESS. Okay.

EXAMINATION BY MR. DOLD:

Question. At the top of page KM-2, Mr. Meisner, the very first line, it says, "Fourth, the Department based its decision," and we are talking about the Hudson casino matter here, "solely on the criteria set forth in section 20 of the Indian Gaming Regulatory Act."

Is that a true statement, Mr. Meisner?

Answer. No.

[Meisner Deposition Exhibit No. KM-2 was marked for identification.]

Mr. DOLD. I have placed before Mr. Meisner what has been marked as KM-2. It is a letter to the editor written by Secretary Bruce Babbitt on January 2nd, 1998, that was published in the New York Times on January 4th. I will allow you to take an opportunity to read this.

EXAMINATION BY MR. DOLD:

Question. In the second paragraph, second sentence, it states in Mr. Babbitt's letter, "This Department does not force off-reservation casinos upon unwilling communities."

Is that a policy that you are aware of?

Answer. Define "policy." What do you mean?

Question. Was it a directive? Was it something that was down on paper? Was it something that the Department of the Interior followed in every case?

Answer. It was not a directive, it wasn't on paper as far as I know, or I can't remember it being on paper, and when you ask me if the Department follows this procedure in every case, I would say that there aren't many cases like this, and so I can't say that yes, the Department follows this procedure in every case, because there aren't that many cases.

Question. Does it follow it in every case that you are aware of?

Answer. Yes.

Question. Can you define for me what "unwilling communities" is, in your understanding of unwilling community?

Answer. No.

Question. Okay. So in your statement before, this is a correct statement, what you were basing unwilling community on when you say yes, it was followed in every instance that you're aware of?

Answer. I don't know what the Secretary was thinking. To the best of my recollection, the Interior Department has not taken off-reservation land into trust for gaming in the face of intense local political opposition.

Question. Now, let me ask you to define for me what "local intense political opposition" is?

Answer. It's when the locals are unhappy and they are complaining to the Department.

Question. How many locals would it be?

Answer. I don't know.

Question. A handful?

Answer. I don't know. In this particular case, to my recollection, there was plenty of local opposition. I don't know numbers. I was not involved in the policy decision.

Question. Okay. Would plenty be 20 percent?

Answer. I don't know.

Question. When you define "plenty," what is plenty to you?

Mr. YEAGER. Before we go much further into policy questions, maybe we should get on the record what Mr. Meisner's job was at the Department of the Interior, what his function was.

Mr. DOLD. I think that's perfectly legitimate.

EXAMINATION BY MR. DOLD:

Question. Mr. Meisner, can you please give us your job description at the Department of the Interior?

Answer. At the time of this matter, I was a staff attorney, a staff attorney at the Interior Department—well, my understanding of what a staff attorney at the Interior Department is a person who works with the Bureau staff and the Secretary's office staff to make sure that the actions that are taken have a legal basis, and so what that means is I wasn't concerned with the policy recommendation or the outcome of the decision in any way. My concern was that whatever the Department did, it would be supportable under the law. So when you ask me a question like, how much local opposition is a lot, I can't really answer that. In this case there was—I would say the opposition was significant, and the reason I say that is because I remember hearing frequently that there were complaints.

Question. That's fair enough.

Answer. So just personally, since I was aware of frequent complaints, that's a lot to me. Because some applications are unopposed. And other applications have local support.

Question. Now, did you hear about any support in this matter?

Answer. To my recollection, there was initial support from some locals, and I don't remember who they were, and I had a memory that that support was taken away, or that they reversed their position. I remember that, but I couldn't tell you who it was, or why. I have no idea.

Question. Okay. We will get into that a little bit later, so we'll move on.

Mr. YEAGER. Did you have a developed understanding of what the policy of the Department of Interior was at any given time besides something that was within your purview as an attorney in the solicitor's office?

The WITNESS. Can you be more specific? Do you mean—

Mr. YEAGER. I think you have testified that your function was to determine whether any particular action by the Department of Interior was lawful. Does that mean in compliance with statutes, in compliance with governing regulations?

The WITNESS. Yes.

Mr. YEAGER. So correct me if I'm wrong, but you weren't keeping much of an eye on the policy of the Department, apart from those authorities I have just mentioned.

The WITNESS. Um, I think your statement is basically correct. The statutes are first in terms of what you're watching, and then regulations, and then of course court cases, interpreting the statutes and regulations. But also at the Department there are memos that the Secretary could promulgate talking about what the policy might be or what his position is on a certain matter; the President might write something that he wants us to follow as the chief executive.

In terms of this specific type of acquisition, I know that the Bureau of Indian Affairs had a policy directive that preceded their regulations. I could not recite to you the substance of that policy directive. I know that the 25 CFC 151 regulations were amended, and that—and I believe that the new regulations took into consideration this sort of off-reservation land acquisition for gaming, at least I remember that we were in the process of promulgating regulations like that. But without those documents in front of me, I couldn't tell you much more about it. Does that answer your question?

Mr. YEAGER. Yes, basically.

EXAMINATION BY MR. DOLD:

Question. In your role in the solicitor's office, in order to make sure that the Secretary and the Department of the Interior were following the law, the regulations and the statutes, would you have to review policy directives, you would have to review things to make sure that they were following these laws and these statutes? That's a fair statement?

Answer. I would look to the statute; I would look to the regulations.

Question. Okay.

Answer. Yeah.

Question. What role does the Governor play in land acquisitions like the Hudson Dog Track?

Answer. Under section 20, or what's commonly referred to as section 20 of the Indian Gaming Regulatory Act, in order to take off-reservation land that's noncontiguous and doesn't fall within a few enumerated exceptions into trust for gaming, there is a three-part test or process that has to be followed. The Secretary of the Interior has to make two determinations. He has to determine whether the acquisition would be in the best interests of the tribe, and he has to determine whether the acquisition would be detrimental to the surrounding communities. If the Secretary decides that the acquisition would be in the benefit of the tribe and not detrimental to the surrounding communities, his decision is then forwarded to the Governor of the State who, under the Indian Gaming Regulatory Act, has the ability or the authority to essentially veto the project by saying, I don't agree, and that ends the process.

Question. Do you know where the Governor of the State of Wisconsin stood on this proposed matter?

Answer. No.

Question. Do you know if he had an articulated stance?

Answer. I don't recall.

Question. Do you know who Tom Collier is?

Answer. If my memory serves me, Tom Collier was Bruce Babbitt's chief of staff, I think.

Question. Do you know where Mr. Collier works now?

Answer. No.

Mr. YEAGER. Have you ever met Mr. Collier?

The WITNESS. No. Not to my recollection. I may have seen him in the hall or something.

EXAMINATION BY MR. DOLD:

Question. Did you ever advise any of the Department of the Interior employees in your capacity in the solicitor's office about accepting gifts from tribes?

Answer. I don't think so. That was a topic of discussion every year when the ethics training came around, but I don't recall any specific requests directed toward me concerning receiving gifts. I'm sure that I had conversations about it with other attorneys, but there's no instance where I can recall an official or someone asking me the question in my capacity.

Question. Do you know what tribes were opposed to the application of the Hudson casino?

Answer. Not without looking at the record, I don't.

Question. Do you know if the Oneida tribe was one of the tribes opposed?

Answer. I don't remember.

Question. Mr. Meisner, how many decisions since the passage of IGRA have there been to deny an opposition to take land into trust for gaming under section 465, part 151, of the Secretarial discretion analysis?

Answer. Off the top of my head, I don't know.

Question. Do you know of any?

Answer. Any decisions where?

Question. Where the decision—

Answer. Where the request was denied?

Question. Using just 465.

Answer. 465?

Question. Part 151, the Secretarial discretion.

Answer. I'm sorry. Can you rephrase the question?

Mr. DOLD. Sure.

Mr. YEAGER. By 465, are you referring to the Indian Reorganization Act?

Mr. DOLD. Yes.

EXAMINATION BY MR. DOLD:

Question. I believe the initial question was, how many decisions have been made since the passage of IGRA, and I believe that was passed in 1988, to deny an application to take land into trust for gaming purposes under a 465 analysis?

Answer. Well, if my memory serves me in this Hudson decision that we're talking about, that was one of the reasons recited in the decision letter.

Question. Do you recall any other instances besides the Hudson case?

Answer. Not off the top of my head, I don't.

Mr. YEAGER. If I could just interject quickly.

Mr. DOLD. Sure.

Mr. YEAGER. Does the Secretary or the Secretary's delegate have the authority to deny a fee-to-trust application for gaming purposes under section 465?

The WITNESS. Yes.

Mr. YEAGER. Is there any question about that in your mind?

The WITNESS. Not in my mind.

EXAMINATION BY MR. DOLD:

Question. From 1998, the date of the passage of the Indian Gaming Regulatory Act, until July 14th, 1995, had all decisions about taking land into trust for off-reservation gaming been made under IGRA, section 20?

Answer. Any time you have an off-reservation land acquisition, and there were not very many of them, to my recollection, you have got to look to both the Indian Reorganization Act, which is the—which gives the Secretary the authority to take the land into trust, unless there's a specific act of Congress directing the Secretary to take land into trust. Then you have to look to section 20 as well. The IRA gives you the authority, and then section 20 provides hoops that you have to jump through. So the two are not mutually exclusive.

Question. So you have to have both, is what I'm understanding?

Answer. Unless there's some exception for an off-reservation land acquisition that doesn't have specific legislative grant of authority, the Secretary must—the Secretary's only authority to acquire land is under the IRA, as far as I know. So yes.

Question. Now, just so I'm clear on this and so the record is clear, section 20 is for off-reservation gaming; is that correct?

Answer. Yes.

Question. And if an application doesn't pass the muster of section 20, the application falls flat on its face at that point in time; is that correct?

Answer. Yes.

Mr. YEAGER. Can it also fall flat on its face for failure—or by exercise of the Secretary's discretion under section 465?

The WITNESS. Yes.

Mr. YEAGER. That's a separate and entirely independent basis for rejecting an application?

The WITNESS. Yes.

EXAMINATION BY MR. DOLD:

Question. But in terms of off-reservation gaming, they have to satisfy section 20?

Answer. Unless there's—

Question. Unless there's something specifically designated by Congress?

Answer. Or some other exception.

Question. Some other exception, they have to satisfy section 20. Otherwise, it's an end of discussion.

Answer. Without having IGRA in front of me, there are a few enumerated exceptions to section 20, but without those exceptions, yes, you have got to go through section 20.

[Meisner Deposition Exhibit No. KM-3 was marked for identification.]

Mr. DOLD. I have placed before Mr. Meisner what has been marked as KM-3. It is an e-mail from George Skibine, dated June 6th, 1995, to Dave Etheridge, Kevin Meisner, Troy Woodward, regarding the discretionary authority to take land into trust. I will ask you to take a look over this.

EXAMINATION BY MR. DOLD:

Question. Do you recall receiving this e-mail, Mr. Meisner?

Answer. I don't remember receiving this e-mail. That does not mean that I didn't receive it.

Question. Of course. And I don't mean to insinuate if you got that from me that that did.

Answer. No, I didn't.

Question. The letter, the e-mail down here reads, just so I can put this on the record here, the second sentence reads, "The letter will decline to take the land into trust pursuant to the IRA and part 151 relying on the discretionary authority of the Secretary not to take such land into trust." It then poses the question, "Are you aware of any cases addressing the Secretary's authority to refuse to take land into trust? The acquisition is for gaming purposes, but we want to avoid making a determination under section 20 of IGRA."

Answer. Okay.

Question. Do you know why you would want to avoid making a determination under section 20 of IGRA?

Answer. No.

Mr. YEAGER. Would it be improper to avoid making a determination under section 20 of IGRA?

The WITNESS. In my opinion, no.

EXAMINATION BY MR. DOLD:

Question. The question here in the e-mail says, "Are you aware of any cases addressing the Secretary's authority to refuse to take land into trust." Are you aware of any?

Answer. Not off the top of my head, I'm not.

Question. Do you recall if you would have responded to an e-mail from George Skibine on an issue like this?

Answer. I don't recall responding to it. My common practice would have been to respond to it. Whether it would be in e-mail form or not, I couldn't say.

Question. Have you had an opportunity to review the record on the Hudson Dog Track matter? When I say "the record," have you had an opportunity to review the file, if it were, on the Hudson Dog Track matter?

Answer. I looked at the final decision letter with Tim yesterday. I don't remember if Tim showed me any other documents yesterday. I have not reviewed what would be considered the Hudson Bay file recently.

Question. Mr. Meisner, when did you first hear about the Hudson Dog Track proposal?

Answer. I don't recall.

Question. Do you know the three applicant tribes? Do you know of the three applicant tribes, being the Red Cliff, Mole Lake, and Lac Courte Oreilles of Wisconsin?

Answer. I know the names of the tribes. What are you—

Question. Do you know them to be financially poor?

Answer. I don't know.

Question. Now, if I recall correctly, your prior work history is quite extensive insofar as Indian matters are concerned, and after the Department of the Interior you, you went to the Indian Gaming—

Answer. National Indian Gaming Commission.

Question. Right. At any time, did you know of a per capita income that the three applicant tribes might have had?

Answer. If I did, I don't remember.

Question. Do you have a general gist? Were they wealthy tribes?

Answer. I don't know.

Question. Okay. Do you know if this was ever considered or talked about at the Department?

Answer. Not to my recollection.

Question. Would objections by opposing tribes be a factor in an analysis under section 20?

Answer. In my professional opinion?

Question. Yes.

Mr. ELLIOTT. Are you talking about a legal analysis? You are asking him now for his legal view of that, or whether that was the practice at the Department, or what he heard from the policymakers?

Mr. DOLD. I would like to go over all three. I would like to know, in your legal opinion as you sit here today, is that a valid—

Mr. YEAGER. Let me, just so I'm not confused by the question, are you talking about Indian tribes that form part of the surrounding community? Are you talking about Indian tribes located hundreds of miles away?

Mr. DOLD. Certainly, I don't want to talk about, you know—in this case I don't want to talk about any Indian tribes in Oklahoma saying that we just don't like this thing. But surrounding areas, for the Hudson matter, I will take tribes in Minnesota because of the location of Hudson, Wisconsin, and also tribes in Wisconsin. So would any objection from a tribe in Wisconsin or Minnesota be a valid—

The WITNESS. I have an opinion as we sit here.

Mr. ELLIOTT. You can answer it.

The WITNESS. Okay. My opinion as we sit here today is that if a tribe were local, part of the surrounding local community, then that tribe's input should be considered. If the tribe were located at a great distance, I think, as I sit here today, that those comments should be given less weight. I don't think that IGRA was designed to shut out any tribe from the opportunities of Indian gaming. And so, for example, I wouldn't agree if the Narraganset tribe objected to the Mashantucket Pequot tribe's facility, or vice versa. I don't think that would be proper, or properly considered, in my professional opinion.

Question. Are you talking about economic grounds, then, economic objections?

Answer. Yes. But let me, let me revisit something I just said, though.

Question. Okay.

Answer. Since the Narragansets are relatively close to the Mashantucket Pequots, if they had a moral objection or something along—or they were complaining about traffic or pollution or crime or something like that, then those types of complaints I think could be considered.

Question. From another Indian tribe?

Answer. Yeah. But—

Question. That's fair enough. I mean—

Answer. We could sit here and debate this, though. I mean the economic impact on a local community could be a factor, but if you ask me if I think that IGRA should be used, or if the application of IGRA should result in one tribe being able to close out another tribe, I don't think that would be appropriate, in my personal opinion.

Question. And your professional opinion, how about that? Is that the same opinion?

Answer. I still, as I sit here, don't think that that would be appropriate. But I'm merely an attorney, and my advice doesn't have to be followed by my client. So it's really—

Question. I understand that.

Answer. It would be my personal and professional opinion.

Question. Okay.

Answer. And highly debatable.

Question. Do you think that the Hudson Dog Track would have provided economic opportunities for the three tribes?

Answer. I don't know. There's no guarantee to the success of any gaming establishment, and for that reason I don't know.

Question. Do you think that the proposal of a gaming facility, recognizing your previous statement that no gaming facility is guaranteed to be a great success, would it have significantly lowered the living standards of other tribes in the Wisconsin and Minnesota areas?

Answer. I don't know.

Mr. YEAGER. Just so the record is clear, were you involved in balancing those sorts of factors in your role as an attorney in the solicitor's office? Were you a decisionmaker in the case?

Mr. DOLD. Those are two different questions.

Mr. YEAGER. Okay. Let's break it down.

Apart from your advisory role in a legal capacity which you testified to, did you play a role, or were you in the decision-making chain on this application?

The WITNESS. Okay. In terms of the decision-making chain, I am a surname box on any decision letter. So I would review the final document, but my role in that review would be for legal sufficiency. That doesn't mean that I might not have an opinion.

Mr. YEAGER. Fair enough.

The WITNESS. But that's not my role. An opinion as to the policy decision, but that was not my role.

EXAMINATION BY MR. DOLD:

Question. Did you ever review any reports specifically? When I say "reports," did you ever review any reports coming out of the Indian Gaming Management Staff on the Hudson proposal, specifically a June 8th memo from Tom Hartman?

Answer. I would have to see it to know whether I remember it.

Mr. DOLD. I'm sorry, I should have given it to you just a second ago.

[Meisner Deposition Exhibit No. KM-4 was marked for identification.]

Mr. DOLD. I have placed before Mr. Meisner what has been marked as KM-4. It's a June 8th memo to the director of the Indian Gaming Management Staff, which I believe at that time was George Skibine, from Indian Gaming Management Staff, and signed next to it is Tom Hartman's signature, or what I will represent to you is Tom Hartman's signature, and the subject is the application of the Sokaogon Community, Lac Courte Oreilles band, and the Red Cliff band to place land in Hudson, Wisconsin, in trust for gaming purposes. Additionally, I will note that at the bottom it is marked "Draft."

I will let you take an opportunity to review the document.

The WITNESS. I don't remember this one.

EXAMINATION BY MR. DOLD:

Question. Are you familiar with any memo of this sort coming out of the Indian Gaming Management Staff, besides the rejection letter?

Answer. If what you're asking is do I remember any out of my memory, I remember the decision letter, but I'm sure there were documents, but I don't remember them in my memory.

Question. If I could, I would like to direct your attention just to page 8. The first paragraph there on page 8, it talks about economic impact and the projected Hudson market share of \$80 to \$115 million is 13 percent to 19 percent of the two-state regional total. A 10 percent historic growth rate in gaming will increase the market by \$50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5 percent, \$25 million. Therefore, only \$5 to \$40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of \$1 to \$8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a \$96.8 million net profit in 1993. A reduction of \$8 million would be about 8 percent, assuming that net revenue decreased the full amount of the gross revenue reduction. At \$96.8 million, the per enrolled member profit at Mystic Lake is \$396,700. Reduced by \$8 million, the amount would be \$363,900. The detrimental effect would not be expected to materially impact tribal expenditures on programs under IGRA section 11.

Now, having read that passage, do you recall any discussion at the Department on economic impact with regard to the Hudson proposal on the surrounding tribes?

Answer. No.

Question. Do you think that would—in your opinion, is a reduction of 8 percent acceptable?

Answer. I could not make that call for that particular tribe. I don't have an opinion.

Mr. ELLIOTT. Could we take a minute and let me confer with Mr. Meisner?

Mr. DOLD. Of course. Absolutely.

Off the record.

[Discussion off the record.]

[Recess.]

Mr. DOLD. When we left, did I have a question posing to you?

The WITNESS. I don't know. Can you read back?

The COURT REPORTER. There was no question pending, but I can read back the last question and answer, if you'd like.

Mr. DOLD. No, that's fine.

EXAMINATION BY MR. DOLD:

Question. You have testified, Mr. Meisner, before that you are not familiar with this report; is that correct?

Answer. I don't remember it.

Question. Do you know if there's any—that's an unfair question to ask, but.

Mr. ELLIOTT. Then don't ask it, Bob.

Mr. DOLD. I'm not going to ask it, because it would be truly an unfair question to ask, so I will refrain.

EXAMINATION BY MR. DOLD:

Question. Did you do an analysis of section 20, detriment to the community in the Hudson Dog Track case?

Answer. No.

Question. Did anybody in the counsel's office do a section 20 analysis, to your knowledge?

Answer. I don't think so.

Question. Well, why don't you think so?

Answer. Because the staff would normally do that. The BIA staff would normally do that. My position or my role would be to review it.

Question. Do you know who was in charge of compiling the record or the file in this matter?

Answer. Not to my recollection.

Question. Would the solicitor's office keep a file on items that came up to the office for advice, consultation? For instance, if a memo was sent up to the counsel's office for you to review, would that be kept in a special file?

Answer. Well, the filing system of the solicitor's office is a very interesting animal, and when I was there I kept my own files. I don't know what other people did, and I'm sure that it varied from branch to branch and from division to division.

Question. What happened to your files when you left the Department of the Interior?

Answer. I don't know.

Question. What did you do with your files upon leaving the Department of the Interior?

Answer. If you're talking about my general files, I don't know specifically what happened to the Hudson file, if I had a Hudson file. What I did when I left Interior was I got all of my files in order, meaning that I sorted through stacks of papers to make sure that everything was in the appropriate folder or binder, and then I left them for the next lucky winner of my projects. Or if they were closed out and the projects were completed, I would put them in a filing cabinet where they probably remain to this day.

Question. Did you ever review section 20 analysis of the detriment to the community prong in the Hudson case that was done, as you say, by the staff?

Answer. I don't remember.

Question. Would that have been something you would have done?

Answer. I don't remember reviewing a section 20 analysis. Would it be something that is normally done? These types of applications aren't normal. They are rare, and so I don't have an answer about normal procedure.

Question. Now, just so we've got some sort of an understanding for the record, when you say "rare," I understand we are not talking once a week. What is rare in your mind?

Answer. Rare means I can count them on one hand.

Question. Do you know who at the Department of the Interior was—strike that. Do you know, were there people at the Department of the Interior that wanted to—strike that. I will rephrase the question.

[Meisner Deposition Exhibit No. KM-5 was marked for identification.]

Mr. DOLD. I place before Mr. Meisner what has been marked as KM-5. It is a July 14th, 1995, letter to the three tribal chairmen.

Mr. YEAGER. Did you say his letter?

Mr. DOLD. I said just the July 14th, 1995, letter—

Mr. YEAGER. Okay.

Mr. DOLD [continuing]. From the Department of the Interior, Office of the Secretary, to the three tribal chairmen, Rose Gurnoe, Alfred Trepania and Arlyn Ackley, Sr. I would just ask that you take a look over that.

EXAMINATION BY MR. DOLD:

Question. Have you seen this before?

Answer. Yes.

Question. Have you seen it in 1995, around the time the application was denied, on July 14th? Because I know that you had testified previously that you saw it with Mr. Elliott, so I just want to make sure that we are not talking about that time.

Answer. I don't remember if I saw this after it was signed in this form.

Question. Did you see it, or a version thereof, of this before it was signed?

Answer. It would be logical to conclude that, but I don't remember.

Question. In the solicitor's office, it would be logical that someone would have reviewed this letter for legal—

Answer. I expect that I saw it, but I don't remember it.

Question. Do you recall if this was a recommendation you agreed with in your legal analysis, I will say?

Mr. YEAGER. The recommendation? The decision, the final decision, not the recommendation. The final decision was one you agreed with.

The WITNESS. I didn't have a policy position. If you want to know if I think that the bases were legally sufficient, I can answer that, but if you're asking me whether I think it was right or wrong, I don't have an opinion on that.

EXAMINATION BY MR. DOLD:

Question. Recognizing that section 151 gives the Secretary broad authority, it would obviously be legally acceptable; is that correct?

Answer. I would say in my opinion that this is—the bases for this decision were sufficient.

Question. And what bases are we talking about? Are we talking about the section codes? Is that what you mean by bases?

Answer. Under the Indian Reorganization Act, the Secretary has broad authority to decide not to grant someone's request to take land into trust.

Question. Was it your recommendation that the letter include 151 and section 20 analysis?

Mr. ELLIOTT. I am going to object to that question. I am objecting to it.

Mr. DOLD. On what grounds?

Mr. ELLIOTT. Because you're delving into his legal recommendations, which is attorney-client privilege and information.

Mr. DOLD. Okay. We'll get back to it.

[Meisner Deposition Exhibit No. KM-6 was marked for identification.]

Mr. DOLD. Showing Mr. Meisner what has been marked as KM-6, it is an e-mail from Mr. Meisner to George Skibine and Heather Sibbison. The date on this is 7-11-95. The text, it's got two different parts. One is from George Skibine at 7-8, stating, "You should get a redrafted version of the Hudson letter," the copy is bad, and I apologize, "first thing Monday morning. I hope it meets Duffy's direction. If it does not materialize, please call Larry Scrivner," and I can't really make out the next part, "will be"—something—"IGMS director until my return," will be acting. And then from Kevin, 7-11-95, down a little bit it says, Why are we changing our analysis to deny gaming under section 20? I thought after Friday's—or after the Friday meeting that everyone, except Duffy, who had not yet consulted—

Mr. ELLIOTT. Who we had not yet consulted?

Mr. DOLD. Agreed that there was not enough evidence supporting a finding of detriment to the surrounding communities under section 20 and, therefore, we would decline to acquire the land under 151.

Do you recall this e-mail?

The WITNESS. Looking at this piece of paper, I can identify this as an e-mail, as a response. I wrote this paragraph, if that's what you mean. So yeah, it's my e-mail.

EXAMINATION BY MR. DOLD:

Question. Can you tell us about the meeting on Friday?

Mr. ELLIOTT. Sure.

The WITNESS. There were several meetings. There was more than one meeting on this issue. Now, according to the e-mail, Duffy wasn't in the meeting, and I have a vague recollection of a meeting in Duffy's office. I can only guess who was there. It would be the usual, the usual folks, but I don't have—

EXAMINATION BY MR. DOLD:

Question. Who were the usual folks?

Answer. Okay. This isn't out of my memory, but normally it would be Heather, George.

Question. Heather Sibbison, George Skibine?

Answer. Yes, Troy Woodward, myself, and then depending on the level of the meeting, Mike Anderson could have been there, Hilda Manuel could have been there, Duffy could have been there. No meeting—I never attended a meeting with anyone more senior to Duffy at the meeting.

Question. And Duffy's position was Counselor to the Secretary, correct?

Answer. Right.

Question. Would Tom Hartman have been in any of those meetings?

Answer. Perhaps he could have been there as well.

Question. Do you recall having a discussion in that meeting that you had—

Answer. I remember a discussion about this issue. I don't remember the specific meeting. I know that there was discussion held on this issue, and as I'm reading this e-mail, which is how my memory works, I remember this. I remember that my understanding was just like the e-mail says. The e-mail speaks better than my memory.

Question. Okay. Do you know why they were changing their analysis to deny gaming under section 20?

Answer. No.

Question. Did you ever get an answer or a response to your e-mail?

Answer. I don't recall.

Question. But you, after reading this e-mail, you do recall that the group, with the exception of Duffy, was—

Answer. Yeah.

Question [continuing]. Prepared to make the decision?

Answer. I remember the contents of this e-mail, and I remember that this happened just as it's written here, I remember it, that these are all—everything I wrote here happened.

Mr. YEAGER. Just, if I might interject, when you—in your answer you talked about "this issue." By "this issue," you're referring to detriment to the surrounding community within two contexts. One is under the Indian Reorganization Act and the other is under the Indian Gaming Regulatory Act.

The WITNESS. No. A detriment analysis would have been conducted pursuant to section 20. I don't think—well, no. Under 25 CFR 151, the local communities are consulted. They are consulted about taxation matters, because often, when you take land into trust, the State or the local communities can lose tax revenues, real estate taxes, that sort of thing. And so you would analyze impacts to the local communities under both section 20 and the IRA regulations.

Mr. YEAGER. Thank you for indulging me.

Just one quick follow up question. So you were talking about which basis or bases to use for denying the application?

Mr. DOLD. I don't think that's what the e-mail says, but go ahead, please.

The WITNESS. You mean when I was talking about the detriment in this e-mail, which—would I be referring to 151 or section 20.

Mr. YEAGER. I guess I was really referring to your reference to issue.

The WITNESS. I'm not sure what the question is.

Mr. YEAGER. I withdraw it.

EXAMINATION BY MR. DOLD:

Question. Mr. Meisner, whose idea was it to include or to use the section 151 analysis in the rejection letter? Was that discussed at this meeting?

Answer. As I remember, that was my idea, but somebody else might want to claim the idea.

Question. And why was that your idea?

Answer. Because, as the e-mail states, I was of the opinion that in a court of law if the decision were challenged that a denial pursuant to the 25 CFR 151 regulations would hold up better than a section 20, based on what I'd seen. And so as I recall, and it might not have initially been my idea, but I agreed with the notion that a denial would be better supported under 151.

Question. When you say "what you had seen," what had you seen?

Answer. I don't remember.

Question. Would you have seen all of the documents coming out of the Indian Gaming Management Staff?

Answer. I don't remember which specific documents I reviewed.

Question. It would be well more than the rejection letter, though; is that correct?

Answer. Yes.

Question. Was there a general feeling that you wanted to reject this application at the meeting? Was there a general feeling that you wanted to reject it and that—

Mr. ELLIOTT. That he wanted to?

Mr. DOLD. No, that the group wanted to reject the application and, therefore, you were looking for the best way to do that.

The WITNESS. You know, I don't remember that.

EXAMINATION BY MR. DOLD:

Question. Do you know whose idea it was to include a section 20 analysis in the rejection letter?

Answer. No. But that would be required normally, and so—no.

Question. Okay.

Mr. ELLIOTT. Can we go off the record?

Mr. DOLD. Sure.

[Off the record.]

EXAMINATION BY MR. DOLD:

Question. Mr. Meisner, did you concur with the section 20 analysis that was placed in the letter?

Answer. Did I concur with the section 20 analysis? Okay, I thought that 151 was a stronger basis. I thought that it wasn't enough evidence under the section 20 analysis for that analysis to necessarily hold up in a court of law. I thought when we got to court, when you got to the merits of the decision, that the record would be rather sparse on detriment, and so I—my legal opinion was that 151 was the better basis to defend a court challenge. So it is not that I agreed or disagreed, I was looking at the thing in terms of how would we do if we ended up in court.

Question. Did you ever consult with Mike Anderson on this issue?

Answer. Yes.

Question. When would you consult with Mike Anderson on a one-on-one basis, in general meetings?

Answer. Well, Mike Anderson was one of my primary clients, and so I had a lot of contact with him on a lot of issues. In this particular matter, to my recollection,

consultation happened in meetings where there were other folks. I remember Mike Anderson being in meetings on this.

Question. Why don't I show you the precise date in here for the record. Is it correct to say the decision for the Hudson Dog Track application was based on section 20 of IGRA?

Answer. Well, the decision document is probably the best evidence of the basis, and it would appear from reviewing this document today that both bases were included in the letter. The letter, of course, speaks for itself, and you will note in the last paragraph they talk about—Michael Anderson is talking about the Indian Reorganization Act, so—

Question. Therefore, because the letter does state both section 20 and section 151, is it correct to say the Hudson Dog Track application did represent a, quote, detriment to the surrounding community under section 20?

Answer. That is what the Department decided.

Question. Do you agree with that?

Answer. Again, I don't agree or disagree.

Mr. YEAGER. I think he just gave a fairly detailed answer to that question.

EXAMINATION BY MR. DOLD:

Question. I am just asking if you, in your personal capacity, understanding the issues as you do, understand that question?

Answer. To tell you the truth, I don't know.

Mr. ELLIOTT. So the record is clear, Mr. Dold, you were not asking him that question in terms of his legal judgment, which he had already responded to.

Mr. DOLD. I was asking him in his personal capacity, knowing what he knows about the issues.

The WITNESS. It would be hard to tell whether the thing would actually be detrimental. It is a tough call, because you can't predict what is going to happen to the facility. A facility can fall flat on its face, and it has no impact. A facility can do very well, and the surrounding communities may end up being thrilled because of increased employment, and the crime might not come in.

EXAMINATION BY MR. DOLD:

Question. What was your understanding as to casinos in general as to how successful they were in urban areas?

Answer. I don't know. If you are talking about a casino in an urban area, I am not familiar with any, other than Atlantic City.

Question. I should say near an urban area.

Answer. Well, I can tell you that the Mashantucket Pequots and the Mohicans are doing well, situated between Boston and New York City, so if you are lucky enough to have that location, you are going to do well.

Question. Are the Shakopee doing well; do you know?

Answer. They are, to my knowledge.

Question. They are near Minneapolis?

Answer. I believe you when you say that.

Question. I will represent that they are near Minneapolis. I don't mean to be coy and say how many miles and feet and all that kind of stuff.

Answer. I have never been to Shakopee, and so I don't have personal knowledge of—you know, I have never been to Minneapolis either.

Question. Having worked at the National Indian Gaming Commission, and having been involved in Indian matters, would there—would a casino's success certainly be greater, potentially greater, the closer they were to a major urban area?

Answer. I think that is a reasonable deduction, but I don't have any personal knowledge. I don't have any data, but under a reasonable standard, it is reasonable.

Question. Do you know the Potawatomie tribe?

Answer. There are several Potawatomie tribes.

Question. I am referring to the one that has a casino in Milwaukee, Wisconsin. I will withdraw it, it is not necessarily important.

I guess what I am trying to get at is ultimately do you know of any Indian tribes that have casinos near major metropolitan areas or urban areas that have casinos that are not doing well?

Answer. No.

Question. Okay. When were you first aware that the application would be rejected?

Answer. You never know what the final decision is going to be until the pen hits the paper, and so the answer is there is no way to know until the thing is signed.

Question. Do you recall in this case if the same was true, the ball was still up in the air?

Answer. In my opinion, the ball is always up in the air until the signature hits the paper.

Question. Having sat in the meetings, at least the ones we have referenced on this matter, in your opinion was the ball still up in the air?

Answer. In Indian gaming, the ball is always in the air until the pen hits the paper. It is a very volatile field. It is a new field. Things happen fast. There is a lot of interest, and no decision is final until the pen hits the paper.

Question. When were you first aware there had been a decision made?

Answer. There is no decision until—

Question. So the same thing, you are still saying July 14, 1995?

Answer. When that thing is signed is when there is a decision, in my opinion.

Question. Of course. Having sat in the meetings, I guess what I am trying to get at is was there a strong leaning one way or another, or was the ball still very much in the air at those meetings?

Answer. I don't know. I can't tell you what was in the minds of the other people, and my focus was on the legal sufficiency of the decision.

Question. Certainly. I don't mean to say that you should be anything besides focusing on the legal sufficiency, but give me your general recollection, if you would, your own personal views, as to which way the Department was coming out, if there was one way the Department was leaning, heavily, not heavily? As a result of those meetings, did you come away with an impression that looks like this one is—

Answer. You know what I would have to do is logically deduce as we are sitting here to give you an answer.

Question. Do you have a recollection of any? I am just asking.

Answer. I mean, I would say that the record reflects, in the later drafts, the thinking of a variety of people, you know. The records reflect that. I found Indian gaming decisions to—I mean, this is me personally—that you really couldn't predict, and that subjects were always open to the push and pull, you know, of the Agency.

Question. Sure, that is fair enough.

Answer. I am not trying to be evasive, I am just trying to be honest.

Question. And I appreciate that.

You mentioned in the later drafts. What drafts are you referring to?

Answer. I am probably thinking of the draft of that final decision letter.

Question. So in the drafts that would have been circulated for people's comments—

Answer. Yes.

Question [continuing]. It would have shown that the decision was going to be denied?

Answer. That would normally be the case. When you get close to making a decision, the final drafts that float around would be probably where you are going.

Question. Do you recall when you first saw one of the draft letters?

Answer. I don't.

Question. To your knowledge, who was the first person to think the application should be rejected?

Answer. I don't know.

Question. Did you ever see a written analysis of why the application should be denied, similar to, you know, a memo like the one Hartman signed; did you ever see an analysis?

Answer. I don't remember.

Question. Would it have been logical to have received one?

Answer. It is logical, but I don't remember. I have worked on hundreds of projects, and without having a binder or a record in front of me, I don't have that type of information in my memory.

Question. But it was normal—I don't know if you used hundreds or thousands of applications you have dealt with or different matters you have dealt with—to have some sort of memorandum to attach explaining decisions?

Answer. Well, this type of decision, you can't characterize it as being normal. This is an unusual case. In terms of common practice, it is common practice in a Federal agency for there to be some paper trail, yes.

Question. I have placed before Mr. Meisner what was marked as KM-7. It is a July 19, 1990 memorandum to the Assistant Secretary of Indian Affairs from the Secretary, who I believe at that time was Manuel Lujan, and the subject was policy for placing lands into trust status for American Indians.

[Meisner Deposition Exhibit No. KM-7 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I will give you an opportunity to just review that.

Answer. Okay.

Question. Have you reviewed this?

Answer. This document predates my employment—

Question. Okay.

Answer (continuing). At the Department of the Interior.

Question. Have you ever seen this document while you were at the Department of the Interior?

Answer. I believe so.

Question. Okay. And when would you have seen this at the Department?

Answer. I don't remember an exact moment when I saw this, but, logically, it would be early on in my employment. This sort of document would be circulated to the staff so that you would have an idea of what you are supposed to be doing when one of these land acquisition requests comes in, and what was happening here is gaming was relatively new.

Question. Was this the policy while you were at the Department of the Interior as well?

Answer. As I recall, there were changes being made to the regulations to better incorporate IGRA. The 25 CFR 151 regs needed some changes. I don't remember what the changes were, but they didn't serve the Department well in terms of the section 20 analysis, to my recollection, and so they needed to be revised, and this sort of memorandum predates the regulatory amendments or changes. I am not sure I answered your question.

Question. When did the regulatory amendments come into play?

Answer. I don't recall the date.

Question. Would it have been after the Hudson casino decision?

Answer. I don't remember. I don't remember the date. I think after, but I don't remember.

Question. Okay. And those were regulations that were set out by whom?

Answer. I'm sorry?

Question. Who would have made the regulations; were these Department of Interior regulations that were made internally throughout the Department?

Answer. It would have been the Bureau of Indian Affairs, Indian gaming management staff. That is logical. It is their subject matter area.

Mr. ELLIOTT. You are not answering they would have been just internal.

The WITNESS. There is a whole comment period.

Mr. ELLIOTT. These are published regulations?

The WITNESS. Oh, sure.

EXAMINATION BY MR. DOLD:

Question. That are from the Department of Interior; they are not from Congress coming down and saying, this is going to be the new policy, this is going to be the new regulations or law? This is something the Department of Interior puts out as an internal policy to be published and followed so people know what the regulations are?

Answer. Regulations are drafted in-house, and then there is a review and comment period, I guess. You publish them as proposed, and then in the Federal Register, folks can write in their comments, and then you make them final. Sometimes there is an informal comment period early on, particularly with Indian tribes. The new regs are promulgated. Sometimes the Agency will shoot them out to the tribes before they turn them into proposed regs so the tribes can come and have an initial crack at it to comment. But it is the public process.

Mr. YEAGER. Counsel, I think the record, Federal Register, will reflect that the new regulations were in proposed final form at the time this decision was issued.

Mr. DOLD. I don't know that, but I will take your representation that that is the case.

Mr. ELLIOTT. It is the 151 regulations you are talking about?

The WITNESS. That is what I am talking about.

Mr. ELLIOTT. I think actually they had been published as final, but there is a 30-day wait period for an effective date of regulations until they are final.

EXAMINATION BY MR. DOLD:

Question. Do you know when it would have been effective?

Answer. I don't.

Mr. DOLD. Does anybody know?

Mr. ELLIOTT. You are testing me.

The WITNESS. Whose deposition is this, Tim?

Mr. ELLIOTT. I can check it at a break and give you a precise date.

EXAMINATION BY MR. DOLD:

Question. I will not ask questions on this if we are dealing under another set of regs. Do you understand what I am saying? I will withdraw the document if you are not dealing with these regulations.

Answer. I can't represent to you that this didn't still apply, I don't know.

Question. Can you tell us what this memo is?

Answer. This appears to be a policy directive from the Secretary of the Interior to the Assistant Secretary regarding what the procedure should be when the Bureau of Indian Affairs takes land into trust for the tribes. This document, if I read it correctly, it delegates authority to the area directors. Really, the document speaks for itself.

Question. Okay. All right. Do you know how this is different than section 20? I mean, I will just draw your attention to the second page. It goes 2, 3, 4, 5, 6, 7. It states out that the property is free from all hazardous and toxic materials; the trust land is to be acquired—and that number 3 is the trust lands to be acquired is located within the States in which a tribe or band presently owns trust land, et cetera. Number 4 is that in consultation with the local, city, county and State governments, an effort must be made by the tribe to resolve possible conflicts over taxation, zoning, jurisdiction, et cetera, and it goes on.

Can you give me an idea as to how this is really differs from section 20?

Answer. Well, I could be wrong about this, but this part appears to track 151.

Question. Right, this is tracking 151. Can you tell me how that is different here than section 20?

Answer. Well, in this document, you mean?

Question. Certainly I want to ask you about this document, but—

Answer. While section 151 and section 20 are different, there is some overlap in terms of the type of information that you are looking for. And so I am not really sure I can answer your question, you know. It would be the kind of thing where I would want to sit down for a couple hours and look at the different—I could write you a memo on it.

Question. I might take you up on that, actually.

Answer. Oh, boy.

Question. I am teasing. I am not going to do anything like that.

Answer. They are different, but they overlap. And this appears to be an attempt of the Secretary to take into consideration both of the requirements.

Question. Do you have any idea where this document came from?

Answer. This one?

Question. Uh-huh.

Answer. It predates me. It came from Manuel Lujan, and who would be in the surname chain, I don't know.

Question. Let me rephrase the question. This document was produced to us. Do you know whose file it came out of or where it would have come from?

Answer. I have no idea.

Question. There are a series of checks on the left-hand margin. Was this something that had to be done, checked off, kind of a checklist of sorts for 151 analysis?

Answer. Someone may have used this as such, I don't know, though.

Question. Was it a policy or something that was done when reviewing land acquisitions to go through here and make sure each one of these things had been done?

Answer. That would be prudent, you know, and maybe someone utilized this document for that purpose. It wouldn't be required that you sit down and, you know, check off—it is a common practice of the BIA to use a checklist. I can tell you that.

Question. Do you know if there was a checklist used in this matter?

Answer. I don't recall.

Question. Number 4 says, "In consultation with the local, city, county, and State governments, an effort must be made by the tribe to resolve possible conflicts over taxation, zoning and jurisdiction."

Do you know if that was done in this case?

Answer. I don't know.

Question. Okay. Do you know if the tribes in the Hudson Dog Track matter provided an economic development plan, specifying the proposed usage for the trust land with a cost-benefit analysis of the proposal?

Answer. I don't have a specific memory of that, but I don't have a specific memory of a lot of the documents that would be involved here.

Question. Did you, when making your 151 recommendation, follow the Lujan directive?

Answer. I would have followed whatever was current at the time. There may have been a checklist that superseded this, I don't remember, but normally what would happen is that something would come up from the BIA, and some people use the checklist, and maybe some people didn't use the checklist, but I would review whatever it was in the file, and if I thought I needed something more, I would go back and ask for it.

Question. But I guess the bottom line is that there are rules that you need to follow in order to apply a 151 analysis; is that correct?

Answer. There are factors to be considered, the factors in the regulations, yes.

Question. Are these all factors that must be considered, to your knowledge, or to your memory?

Answer. The ones that are in this?

Question. The ones in this, yes.

Answer. It would appear that many of the items listed in this memo are similar, if not identical, to the regulations.

Question. Do you know—

Answer. But, of course, the Secretary can waive his regulations also.

Question. Do you know if the Secretary waived his regulations in this case?

Answer. I don't know, but if the question is is it normal to follow the regulations, the answer is yes. But the Secretary has broad discretion, under the Indian Reorganization Act, to do these things the way he wants to do them.

Question. I understand that, and that is what I am trying to get at is his discretion in this matter. It appears to me there are some rules and some guidances to be followed in a 151 analysis, and I am just trying to really kind of better understand whether these are things that have to be taken into account when making that analysis, or does the Secretary just get up one morning and decide, I want to, you know, decline the application under my broad discretionary authority? Is there a set of guidelines?

Answer. What I can tell you is it is more legally defensible to follow the regulations, but to my understanding, if the Secretary wanted to waive his regulations, he could do so.

Mr. YEAGER. As I understand this discussion, we are talking about a hypothetical situation, and he is giving his general thoughts; am I correct about that?

The WITNESS. That is correct.

Mr. YEAGER. You have no reason to believe that anybody waived regulations in this particular case?

The WITNESS. No, I don't, no.

EXAMINATION BY MR. DOLD:

Question. Number 3, it says, "Trust land to be acquired is located within the States in which a tribe or band presently owns trust land," was that the case in the Hudson matter?

Answer. I don't know.

Question. Do you know where the three applicant tribes, Red Cliff, Mole Lake, and Lac Courte are located?

Answer. Off the top of my head, I don't know.

Question. If I represent to you that they are Indian tribes that are located in Wisconsin, would that surprise you?

Answer. No.

Question. I do represent they are tribes that are located in Wisconsin.

Answer. Okay.

Question. And Hudson, Wisconsin, would also be considered to be within the State?

Answer. Okay.

Question. Is that correct?

Answer. I don't have any geographic knowledge of Wisconsin. There are 500 and something federally-recognized tribes, and I have to pull out my map to know where they all are.

Question. Well, I am not going to bring a map up here. You will just trust that Hudson, Wisconsin, is in the same State as the Wisconsin tribes?

Answer. Okay.

Question. And I trust you will not dispute that, but based on your independent knowledge, you cannot say you know specifically where Red Cliff, Mole Lake—

Answer. Now that we are talking about it, I remember that they are in Wisconsin.

Question. Mr. Meisner, is it your understanding that any opposition to an off-reservation casino would be sufficient to cause an application to be rejected?

Answer. I can only tell you what I think would be supportable. I would not be the person who decides how much or how little opposition is enough under section 20. I would be a person who would look at a draft and say whether I thought that sort of a decision, based on the evidence, would be upheld in a court of law.

Question. You have already testified to that earlier, so we won't go over it again.

Did you ever articulate your understanding and belief of what detriment would be supportable to the Indian gaming management staff?

Answer. I don't think so.

Question. Did you ever make those thoughts known to Mr. Anderson, Michael Anderson?

Answer. What thoughts?

Question. The thoughts of what would be required, or what would stand up before a court with regard to detriment?

Answer. Okay. If I recall correctly, there was a meeting—

Mr. ELLIOTT. I didn't take your question to be limited to the Hudson Dog Track. I'm not sure what he was going to respond to.

The WITNESS. I was thinking it was.

EXAMINATION BY MR. DOLD:

Question. Based on it being limited to Hudson, what were you going to say?

Answer. There was a meeting, and I believe that Mike Anderson was in the meeting, and I believe that I gave my advice, which appears in the e-mail that you showed me, that based on what I had seen, the Indian Reorganization Act provided a better legal basis upon which to rest a decision to deny the application, as opposed to section 20, as opposed to merely relying on section 20.

Question. Why?

Answer. Because at the time, the evidence that I had seen was sparse, just like one of those e-mails says that there was sparse data.

Mr. YEAGER. Is it possible there was data you didn't have an opportunity to look at?

The WITNESS. Sure.

EXAMINATION BY MR. DOLD:

Question. I assume there are always those opportunities, probably in everything to this day; is that correct?

Answer. I'm sorry?

Question. Always out there, there is data that you might not have seen or known about?

Answer. Oh, sure.

Question. On any issue that you deal with?

Answer. Sure.

Question. Did you ever articulate to the Indian gaming management staff what was needed legally to support a finding of detriment to the community, not just including Hudson, but at any time?

Answer. I think I probably made some statements about that in meetings.

Question. Do you know when the applicants were first informed that their application would be rejected?

Answer. No.

Question. Mr. Meisner, what was the local opposition on the Hudson Dog Track, to your knowledge?

Answer. I don't recall who was opposed, only that it was local, and local to me means that maybe—and I don't remember; a mayor, a selectman, local officials, town, I don't remember who.

Mr. DOLD. I have placed before Mr. Meisner what has been marked as KM-8. It is an e-mail from Kevin Meisner to Mr. Woodward, Troy Woodward, George Skibine, Paula L. Hart, Tom Hartman, and Larry Scrivner, regarding 7-6-95 meeting on the Hudson Dog Track.

[Meisner Deposition Exhibit No. KM-8 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I will give you an opportunity to review that.

Answer. This one was in the newspaper. I am familiar with it.

Question. Okay. Do you remember the 7-6-95 meeting?

Answer. I can't say that I remember the date. I remember meetings on these issues.

Question. Is it your position that the local opposition must articulate a specific detriment to the community for a section 20 analysis?

Answer. It was my position in this e-mail.

Question. Was it your position—I will leave it at that, that is fine.

Answer. This e-mail speaks for itself. You have it in your possession, and I will represent to you it is my e-mail, and this is what I wrote to these folks.

Question. For the record, the e-mail reads, "My view on this matter is that the bald objections of surrounding communities including Indian tribes are not enough evidence of detriment to the surrounding communities to find under section 20 of IGRA that the acquisition for gaming will be detrimental to the surrounding communities."

"Specific examples of detriment must be presented by the communities during the consultation period in order for us to determine that there will be an actual detriment. A finding of detriment to the surrounding communities will not hold up in a court without some actual evidence of detriment. In this case the gaming office did not think their information obtained during the consultation period was enough to show actual detriment to the surrounding communities."

"I think that a decision not to exercise our discretionary authority to take land into trust under 151 is enough to show surrounding communities that we take into consideration their opposition and that casinos will not be foisted upon them against their will."

Answer. Yes.

Question. In this meeting with—I guess directing your attention to the second paragraph, in this case the gaming office did not think the information obtained during consultation was enough to show detriment. Was that communicated to you in this meeting?

Answer. I don't remember when it was communicated to me. I don't remember.

Question. Would it have been around the time you would have sent the e-mail?

Answer. I don't remember.

Question. And just so we are clear, the sentence I just read to you about the gaming office and their thoughts on the actual detriment to the surrounding community, was it your understanding that there wasn't enough information to show detriment to the surrounding community as well? I mean, in the e-mail you say that the gaming office—

Answer. Based on information that I had received from the client, meaning the Bureau of Indian Affairs, and I can't articulate what form that information was in, this was my recommendation, or this was my opinion on the subject based on everything I had seen up until this point.

Question. Was it your understanding that opponents to an application were required to articulate a specific detriment to the community for their opposition to be valid?

Answer. No, that would be a policy cut, and my sole interest was defendability, and I thought that evidence, specific evidence, would be something that you could present before a court, would hold up better under a judge's scrutiny.

Mr. ELLIOTT. Can we go off the record?

Mr. DOLD. Sure.

[Recess, 12:30 to 1:00 p.m.]

EXAMINATION BY MR. DOLD:

Question. Mr. Meisner, if I may, I would like to go back, just very briefly, to Secretary Lujan's memo, just so that I am clear. The first portion of the memo it states 25 CFR 151.10 states A through F. Is that your understanding as well?

Answer. From the document?

Question. From the document.

Answer. Uh-huh.

Question. And then 2 through 7, and then additionally 1, 2, 3 below it, for gaming purposes, through 5, are the regulations, if you will—I don't want to say a word as strong as regulations—are the recommendations that the Secretary uses for the Department of Interior officials, is that your understanding as well? Is that his recommendations for what to take into account?

Mr. YEAGER. Are you talking as of July—is there a time frame for your question?

Mr. DOLD. I will go from July 19, 1990, up to the Hudson matter.

The WITNESS. This memo would be in effect until it was superseded with some other policy guidance or new regulations or something that would conflict with this, that was more powerful than it, like you say, the statute, regs, and then guidelines.

EXAMINATION BY MR. DOLD:

Question. These guidelines are, what, the numbered paragraphs; is that correct? Those are guidelines sent down from the Secretary's office?

Answer. I would characterize them as guidelines.

Question. And I believe you also testified earlier that if the Secretary chooses to waive those guidelines, that it is entirely up to him or her?

Answer. The Secretary certainly can repeal guidelines at any time, and I believe, and I may be incorrect, the Secretary, under certain circumstances, can also waive regulations.

Question. Now, when you say "Secretary," do you mean the Secretary of the Interior only, or does that mean—

Answer. I am referring to the Secretary himself. I don't recall any instances where that happened, but I am aware—and the true expert is actually sitting next to me—that the Secretary has the authority to waive his regulations. But that thought does not arrive from the land acquisition process. I am aware that the Secretary can waive regulations for the acknowledgment process, which is something that has nothing to do with this, but that is where that information comes from in my mind, not from the land—my experience doing land acquisition work, but my experience doing tribal acknowledgment work.

Question. When you refer to the Secretary, though, you are referring just to the Secretary of the Interior, not assistant secretaries or deputy assistant secretaries, just the Secretary?

Answer. I am referring to the Secretary. That doesn't mean that subordinates couldn't be delegated that authority, but I am not aware of it. I am aware that in certain circumstances, the Secretary can waive his regulations, departmental regulations.

Question. Do you know where that authority comes from?

Answer. No.

Question. Do you know of any instance where the Secretary has waived regulations in order to make a decision under 151?

Answer. No, nothing is coming to my mind. I don't remember any circumstance like that.

Question. Does section 151 grant the Secretary any of the discretion which we talked about?

Answer. No, I don't think so.

Mr. YEAGER. If I might interject, do you have any reason to believe whatsoever the Secretary or Secretary's delegate waived any authorities—

The WITNESS. No.

Mr. YEAGER [continuing]. For the Hudson casino decision?

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. Following up on that, then, the regulations as written down by Secretary Lujan, the numbered paragraphs, all have been followed by the Department of the Interior then if the Secretary did not waive the regulation?

Answer. If these guidelines are the most current policy statement, and I don't know that they are, then the employees should be following them, yes. In other words, if you handed these to me, and it has the Secretary's signature on it, and I am a person doing this type of work, this means I should be following these, because my boss, the Secretary, told me to.

Mr. ELLIOTT. Mr. Dold, I would point out that in the exhibit it is not clear the numbered paragraphs, after number 1, are indeed regulations.

Mr. DOLD. We have the first paragraph is the regulations under 25 CFR 151. Paragraphs 2 through 7 and the rest.

Mr. ELLIOTT. I think you characterized them as regulations.

Mr. DOLD. I certainly apologize, I don't mean to characterize them as regulations. Perhaps the best thing to say—in fact, let me withdraw it.

EXAMINATION BY MR. DOLD:

Question. Mr. Meisner, what do you interpret paragraphs 2 through 7 and 1 through 5 to be, because I don't want to use the wrong term?

Answer. Well, paragraph 2 is a restatement of what is required in 602 Departmental Manual 2.

Question. And what is that?

Answer. What it means is the Secretary—the Department doesn't acquire land into trust if there is hazardous and toxic material on the property.

Question. But would that be a regulation?

Answer. No, it is a—you know, I don't know. I know that you can't do a land acquisition without doing this because of the potential liability for the Department under a variety of Federal and State statutes. The Department looks to take property into trust free and clear of liens and liability, and if you have like a hazardous waste dump in the middle of your property, under certain Federal statutes, which I couldn't enumerate for you, you could be liable, even though you are not the person who did the polluting. So that is the reason for that, and I believe it is a requirement. I can't tell you off the top of my head the source. It is in the departmental manual, as indicated by the citation here.

Question. Did the Secretary waive any of the 151 regulations in the Hudson casino matter, to your knowledge?

Answer. No.

Question. What would you call the numbered paragraphs? They are not regulations, as Mr. Elliott points out. Would they be directives?

Answer. I would call them guidelines.

Question. Guidelines?

Answer. Uh-huh.

Question. Okay. And the Secretary can ignore those guidelines if necessary; is that correct?

Answer. Yes. Guidelines are promulgated to assist staff in reaching a conclusion or in coming up with a recommendation. And a lot of times these guidelines are promulgated by the staff who are doing the work, I mean, it goes up just like any other, and, specifically, in Indian Affairs, these types of guidelines are promulgated because you have a bunch of offices all over the country with area directors who have the authority to take land into trust, and so they want to standardize what is happening throughout the country. That is my—that is my guess as to what was going on here, and that is the purpose of guidelines, particularly, in this type of situation. And they could be changed at any time.

Question. And the Secretary has the authority on these guidelines to waive them, if necessary?

Answer. Sure. They are just guidelines. Guidelines, unlike regulations, can be, you know, withdrawn, promulgated.

Question. Or changed without a notice and comment period or anything like that?

Answer. This type of document, yes.

Question. We had talked before earlier in the proceeding here about local opposition. Was there somebody at the Department whose job it was to determine if the opposition was valid?

Answer. I don't know that there was anyone specifically designated to hold a position like that, but that determination could only be made by the ultimate decision-maker, and the staff would come up with recommendations based on the submissions.

Question. Were Congressmen considered part of, quote, unquote, the local community, for the local opposition provision of section 20, for detriment to the community?

Answer. You mean State Congressmen or Federal?

Question. Federal Congressmen.

Answer. Federal level?

Question. Yes.

Answer. I don't remember. I don't remember seeing any comments.

Mr. DOLD. Showing Mr. Meisner what has been marked as KM-9. It is an e-mail from Mr. Meisner to Heather Sibbison, cc'd to Mr. Elliott, and Troy Woodward, and the subject is a letter from Duffy, John Duffy, to Congressman Gunderson.

[Meisner Deposition Exhibit No. KM-9 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. The second paragraph is really what I would like to draw your attention to, if I may. It states, "I think the question of whether a Congressman can participate in the State consultation process for taking land into trust for gambling under IGRA (25 U.S.C. 2719(b)(1)(A)) should be answered in the negative."

Answer. This document is a testimony to my inability to remember things. It says it is from me, and I can't say that I remember writing it, but I don't dispute it, and I do remember that there was a letter from this Congressman.

Question. My point was not to bait you into this. If you remembered, we would never have brought the memo out, so it is just to refresh your recollection.

Answer. No offense taken.

Mr. DOLD. I have placed before Mr. Meisner what has been marked as KM-10. It is an e-mail authored by Troy Woodward. The date is July 6, 1995, to George

Skibine, Paula Hart, Tom Hartman, Larry Scrivner, and Kevin Meisner, and the subject is regarding the July 6th, 1995 meeting on Hudson Dog Track.
[Meisner Deposition Exhibit No. KM-10 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I would like you to take an opportunity to read that real quickly. The first page, Mr. Woodward says that he has written a brief narrative about what happened at the meeting with Duffy yesterday. He is including it as an attachment to this letter.

Answer. Okay.

Question. Do you recall receiving this e-mail?

Answer. No.

Question. Does reviewing this e-mail refresh your recollection as to any substance discussed in it?

Answer. I feel like I am reading it for the first time.

Question. The first paragraph on the second page, the second sentence, it says, "We discussed George's letter for Ada's signature, informing the three Tribes that the Secretary was declining to take land into trust in accordance with his discretionary authority under 25 CFR 151."

My question to you is I assume "George" is George Skibine?

Answer. I would assume that.

Question. And Ada's signature would be Ada Deer?

Answer. I would assume that, too.

Question. Okay. Do you know if Ms. Deer recused herself in this matter?

Answer. I believe that she did, but that belief is based on things that I have heard recently.

Question. So you at this time did not know that Ms. Deer had recused herself?

Answer. I don't remember.

Question. If someone recuses themselves, what is the normal procedure for letting other people know you have recused yourself?

Answer. I can't say that there is a normal procedure. Recusals don't happen that frequently, but they do happen, and I am speculating, maybe a memo, an e-mail.

Question. Okay. Mr. Duffy and Heather Sibbison, Mr. Anderson and Troy Woodward were all people that were involved in the Hudson application; is that correct?

Answer. Yes, apparently, based on this e-mail.

Question. Outside of the e-mail, do you know if Mr. Duffy, Ms. Sibbison—I believe you testified before you sat in meetings where they were present?

Answer. Mr. Duffy, yes; Heather Sibbison, yes. I believe Bob Anderson was the Associate Solicitor, so he was my boss, and that would mean yes.

Question. Troy Woodward?

Answer. Troy Woodward was involved, yes.

Question. So you do know of them outside of this e-mail as, well, being involved with the Hudson matter?

Answer. Yes.

Question. I wanted to make sure we were clear on that. And Ada Deer was the Assistant Secretary at that time?

Answer. Correct, and I don't remember her being involved.

Question. Do you have any idea why people so central to the application would not have known that Ada Deer had recused herself?

Answer. I don't know that people didn't know that Ada had recused herself. I don't remember.

Question. Well, would you deduce from this e-mail that at least Mr. Woodward certainly didn't know?

Answer. No.

Mr. YEAGER. Are you asking for a present deduction?

Mr. DOLD. A present deduction.

The WITNESS. Troy Woodward in the e-mail is talking about a letter for Ada's signature, and so it is logical to conclude that he didn't know at that point that Ada was recused. I don't have personal knowledge of that.

EXAMINATION BY MR. DOLD:

Question. In the second paragraph again, halfway through, Mr. Woodward writes, I expressed the opinion, advocated by George and which we have used to evaluate objections in the past, that the consultation process does not provide for an absolute veto by a mere objection, but requires that the objection be accompanied by evidence that the gaming establishment will actually have a detrimental impact (economic, social, developmental, etc.) was that an opinion you also shared?

Answer. I don't know what standard Troy Woodward is talking about in the e-mail. And so, no, to my memory, this was the first time that this came—that this type of issue arose. And so I don't remember it being a standard or anything like that.

Question. I'm sorry, the fourth paragraph, first sentence, reads, "The upshot of the meeting was that Duffy wants the letter rewritten to include a further reason for denying to take the land into trust under section 20 because the consultation process resulted in vehement and wide-spread local government and nearby Indian tribes' opposition to locating a casino at this site."

Do you recall Mr. Duffy advocating he wanted a letter rewritten to include section 20?

Answer. No. That doesn't mean that it didn't happen, I just don't remember.

Question. That is fair enough.

Mr. DOLD. Showing Mr. Meisner what has been marked as KM-11. It is a memo to the Assistant Secretary of Indian Affairs, through the Deputy Commissioner of Indian Affairs, from George T. Skibine, Director of Indian Gaming Management Staff. The subject is the application of the Sokaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to place land located in Hudson, Wisconsin, into trust for gaming purposes. It is marked "draft," and it is undated.

[Meisner Deposition Exhibit No. KM-11 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I will let you peruse it a little bit.

Mr. ELLIOTT. Do you just have one or two specific questions?

Mr. DOLD. Yes. He doesn't need to go into the detail, but if you want to.

The WITNESS. No, go ahead, I get the idea.

EXAMINATION BY MR. DOLD:

Question. Have you seen this document before?

Answer. I believe I saw it yesterday.

Question. But you did not see it at the time of the casino proposal; is that correct?

Answer. I don't recall seeing this specific document, which again doesn't mean that I didn't see it.

Question. Directing your attention to page 4, if I may. Directing your attention to the bottom of the page, paragraph reads, "First"—this is in a letter from Sheila Harsdorf, dated March 28, 1995. Paragraph reads, "First, the signatories cite the removal of land from the local property tax rolls."

Is this a valid objection for local opposition to take?

Answer. Judging from the 25 CFR 151 regulations, it is something that the Department is supposed to take into consideration and consult with the local officials on. And so if what you mean—what do you mean by "valid"?

Question. Is it a valid concern?

Answer. It is required.

Question. It is required you do this?

Answer. Under 151.

Question. Is it something that can be mitigated, this problem?

Answer. Yes.

Question. Okay. Do you know if it was mitigated in this instance?

Answer. No, I don't know.

Question. Turning the page on to page 5, that top paragraph, Second, the representatives assert that 'expansion of gambling is contrary to public will in Wisconsin.'

Is that a valid concern under section 20 of the Indian Gaming Regulatory Act?

Answer. I think a court of law will make that determination. In my opinion, like my e-mail says, the bald allegations of detriment are not enough to support a determination of detriment. Whether or not a judge agrees with me I couldn't say, but in a risk assessment, I thought that it would be better to have evidence, rather than a public sentiment poll, but I am conservative.

Question. We won't hold that against you.

The second paragraph, if I may draw your attention to the second paragraph, reads, "Third, the letter says that off-reservation gambling may not foster economic development within the tribal nations."

First off, do you know this to be true; or I think you testified earlier, but I will let you answer?

Answer. This is a letter from—

Question. Sheila Harsdorf.

Answer. She is alleging off-reservation gambling may not foster economic development.

Question. Within the tribal nation?

Answer. And you want to know whether that is a true statement or not.

Question. Whether you believe that to be.

Answer. I have no idea.

Question. Is it a valid concern in the section 20 analysis?

Answer. That question would go to whether or not the acquisition is in the best interest of the tribe. If you could somehow look into a crystal ball and determine that a gaming facility would go bankrupt and plunge the tribe into debt, then this sort of a statement, if it were true, would be something to consider, but you can't really predict that.

Question. Sure. Do you know of any Indian casinos that have gone bankrupt?

Answer. I have a general knowledge that some of the facilities have shut down because of lack of profitability.

Question. Can you site them for us specifically, because I don't know?

Answer. I can't. There are a number of small facilities located in remote areas that have not been profitable. I can't site specific examples to you.

Mr. YEAGER. Are you aware the applicant tribes operated casinos?

The WITNESS. Yes.

Mr. YEAGER. Well, strike that. I can't represent to you that they are casinos, I believe they are gaming facilities of one kind or another.

The WITNESS. Okay. My understanding is that each tribe had a facility. That might be wrong, but it is my—it is what I remember.

EXAMINATION BY MR. DOLD:

Question. Do you remember how well these gaming facilities were doing?

Answer. No.

Question. Would that be information you also would have received or would have been available to you?

Answer. I don't know. I am not sure how it would be relevant.

Question. As far as just the economic wherewithal of the tribes, I mean, how well off they were doing?

Answer. I don't really remember that as being a factor.

Question. The last thing that Ms. Harsdorf relates to in the third full paragraph of this is she, you know, talks about, quote, "Many municipalities feel that the expansions have created tense racial atmospheres and that crime rates have increased."

Now, Mr. Meisner, is it a valid objection that the Department of Interior would hold or give any weight to that the local community didn't want Indians in their community?

Answer. I'm not sure I would characterize this statement as saying that. What comes to my mind is public health and safety concerns, not racial concerns. This sentence says, "Tense racial atmosphere and increase in crime rate is a public health and safety concern."

Question. Could that also be mitigated?

Answer. I don't know.

Question. Well, you worked on other casinos, I assume, before in your past.

Answer. I can't remember any examples of a situation where there was a tense racial atmosphere where someone tried to step in and mitigate that. I can't recall any scenario like that.

Question. Since you were talking before about health and safety and now you went back to racial, let's talk about racial. At the Department of Interior, is it a valid concern and would it be one that the Department would weigh into, in whether to grant land to the trust, that the community did not want Indians there?

Answer. If bringing an Indian casino into a community would create a public health and safety risk, regardless of whether it's because I'm purple or just because you don't like me or what have you, that's a valid concern. It's definitely a valid concern, because as far as I know, the United States and the Department of the Interior have an interest, particularly on Federal Indian lands, in the public health and safety of not only the tribes but also the patrons of the gaming facilities. And so regardless of what the source of the tension is, if the outcome is a public health and safety risk, then it's a valid concern.

Mr. YEAGER. If I might just interject, do you have any reason to believe that the Interior Department considered expressions of racism as part of its detriment to the community analysis?

The WITNESS. No. The mere fact that they were Indians I don't think—it certainly didn't cross my mind, and I would be surprised if it crossed anyone else's mind.

EXAMINATION BY MR. DOLD:

Question. Would that be a valid objection by a local community, though, to say I don't want them in here because they're Indians?

Answer. I really couldn't say whether that's valid or not. I mean I have a personal feeling.

Question. Do you have a legal feeling?

Answer. I can't speak on behalf of the Department of the Interior.

Question. Certainly as an attorney—

Answer. I mean I'm an Indian attorney, and so I represent an Indian tribe, and you know, my personal view would be that it's certainly not valid, the exclusion of a race.

Question. In your legal opinion, is it valid in any instance to exclude someone based upon race?

Answer. I think if I were advising a client, and this is a hypothetical—

Question. This is indeed a hypothetical.

Answer [continuing]. I think the courts would have a field day on anybody who did something like that.

Mr. YEAGER. Did that play, this question about considering race as a factor, play any role whatsoever in the Hudson casino decision?

The WITNESS. Not to my knowledge.

EXAMINATION BY MR. DOLD:

Question. Is—

Answer. And I would remember, because that would be something that would disturb me.

Question. Are you aware that there is today and was at the time in 1995, I will represent to you, an existing Class III gaming facility in Hudson, Wisconsin?

Answer. What do you mean, Class III gaming facility?

Question. I mean a facility that would be—and if this were to be granted, the casino would be, my understanding is, a Class III gaming facility.

Answer. Okay.

Question. And at the time the application was in motion at the Department of the Interior, there existed a Class III gaming facility on site of where the land was to be taken into trust, if the application was approved.

Mr. ELLIOTT. I think that Mr. Meisner's question back to you is based on some knowledge that he may have that there are different kinds or levels of Class III.

Mr. DOLD. And that certainly could be, because I do not represent that I have an extended knowledge of Class III gaming facilities, because I do not.

Mr. YEAGER. I was about to say, counselor, are you suggesting that Galaxy Gaming and the applicant tribes don't need to go through this protracted controversy in order to develop a casino in Hudson, Wisconsin?

Mr. DOLD. I am absolutely not saying that, but what I am saying is that there is, for the townspeople that have this tremendous concern about gambling and the problems that it would create, that there is a Class III gaming facility. There is a facility being built, there is a 10,000-car parking lot, there is everything conceivable for someone to come in and wager their money in Hudson, Wisconsin. In fact, we can go there today and do the same.

EXAMINATION BY MR. DOLD:

Question. My question to you is, was there a consideration? Did you know that at the time?

Answer. I'm confused.

Question. Okay.

Answer. Are you saying that there—when you say Class III facility, that means an Indian casino to me, because outside of Indian Affairs there is no such thing as Class I, II, and III. So are you saying that there's an Indian casino in Hudson, Wisconsin, an Indian tribal casino operating?

Question. No. My understanding is that they operated a Class III gaming license. Now, I may be incorrect.

Answer. Class III is a term of art for me. It means Indian casino.

Question. For me, it doesn't necessarily represent that to me.

Mr. YEAGER. Maybe we should not use the term Class III.

EXAMINATION BY MR. DOLD:

Question. Let me just say that there was a gaming facility where people could go and wager money on dogs.

Answer. Yes, there was a dog track, yes.

Question. And wagering money, that's gambling, or gaming, as it were?

Answer. I think it is.

Question. Were you aware of that at the time?

Answer. Yeah. That's why this was called the Hudson Bay Dog Track land acquisition. So yes.

Question. The health concerns that you raised on crime, that was raised in Ms. Harsdorf's letter, is that something that could be mitigated with a greater police force?

Answer. Okay. In a situation where you have increased crime, assuming there were increased crime, you could mitigate that, yes. Just about anything can be mitigated.

Question. Were the tribes, the three applicant tribes, given an opportunity to cure the application?

Answer. I don't know.

Question. Were they informed that there were problems with their application? Prior to the rejection letter, obviously.

Answer. I don't know.

Question. Is there someone at the Department of the Interior who is in charge or is supposed to inform the tribes that there's a problem with their application?

Answer. Speaking about—speaking in the realm of land acquisition and land acquisition—or applications, I'm not sure that there is a person designated to be a tribal liaison or something like that. I'm not sure what you're getting at.

Question. I guess what I'm really getting at is, you said before that things can be mitigated, and obviously, based upon the July 14th, 1995 rejection, there were those at the Department of the Interior that felt that there were problems with the applicant tribes' application.

Answer. Uh-huh.

Question. And the question is, is there anyone at the Department of the Interior that is supposed to contact the tribes and inform them that they have problems with their application? Because I assume that if a problem can be easily mitigated or mitigated, that the Department of the Interior would allow the tribes to do such. My question is just focusing—

Answer. Okay. There is a consultation directive from the President, an Executive Order, perhaps, I don't remember the exact verbiage, but I think that it says something along the lines of when possible, you are—

Mr. ELLIOTT. I think he'll show it to you.

The WITNESS. If you have got it, it speaks for itself.

Mr. DOLD. We'll just put it in front of you. I think I have it, anyway. Yeah.

[Meisner Deposition Exhibit No. KM-12 was marked for identification.]

Mr. YEAGER. While we are marking the document, counsel, if I may.

Mr. DOLD. Sure, please.

Mr. YEAGER. Are you aware of consultation or lack of consultation with the applicant tribes with respect to this case?

The WITNESS. No.

Mr. YEAGER. You have no subsequent knowledge about consultation?

The WITNESS. I wouldn't be involved in the consultation.

EXAMINATION BY MR. DOLD:

Question. Is the Department of the Interior legally required to consult with the tribes?

Answer. I'm not sure whether an Executive Order is—

Question. Away from this document, let me draw back from this document. In general, legally speaking, under section 20, under section 151, under any of the regulations that would be used to deny this application as stated in the July 14th, 1995 letter, is consultation with the applicant tribes required by law?

Answer. Just as a matter of course, when a tribe submits an application, in order to process the application, you consult with the tribes. I'm not sure there is a legal standard as to what consultation means.

Mr. YEAGER. Perhaps you could write a memo on that one, too.

Mr. DOLD. Perhaps Mr. Yeager wants that memo. I will take the first and you can give Mr. Yeager the second.

EXAMINATION BY MR. DOLD:

Question. But is there, in the law, in the regulations, to your knowledge, is it required that the Department of the Interior consult the Indian tribe, the applicant tribes?

Answer. I'm not sure how you're defining consult, and that's why I'm having a problem coming up with an answer. What I'm thinking of is when the tribe submits its application, naturally the staff people are going to have questions about it and they are going to go back.

Is it legally required? I can't think of anything that binds the Department, other than this Executive order that you have handed me, to consult. As a matter of course, I don't see how you could process an application without talking to the applicant.

Mr. ELLIOTT. Mr. Dold, could we have the record show that this is an executive memorandum?

Mr. DOLD. Of course. Let me let the record reflect that KM-12 is an executive memorandum sent from the President to the heads of the executive departments and agencies, and the memorandum is on government-to-government relations with Native American tribal governments. It is dated April 29th, 1994, and the section which we were specifically referring to is paragraph (b), which reads: "Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals."

EXAMINATION BY MR. DOLD:

Question. Are you familiar with this directive, or memorandum, I should say?

Answer. Yes.

Question. Do you know if this paragraph (b) was followed in the Hudson casino application?

Answer. I don't know. I think a court would have to determine that.

Question. In your opinion?

Answer. I don't have an opinion, because the extent of my participation wouldn't make me privy to every piece of—I don't know who called who, who was talking to whom. I don't have the type of information to tell you whether consultation took place or not. That would not be my role. It would be the staff people and others would have participated in that.

Question. Mr. Meisner, I have before me, I have pulled from my book and I will be happy to show you what is an excerpt from section 2719 B(1)(a), and we will read it for the record and let you take a look at it before you comment. But B(1)(a) reads, "The Secretary, after consultation with the Indian tribe and the appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interests of the tribe and its members and it would not be detrimental to the surrounding community, but only if the governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination."

Answer. Right. Commonly known as section 20 of IGRA.

Question. And that's—so you are familiar with the statement?

Answer. Uh-huh.

Question. So is it—and section 20 of IGRA is the law?

Answer. Yes.

Question. So by law, there is required a consultation with the Indian tribes?

Answer. Yes.

Question. And directing your attention back to the presidential memorandum, did you advise anyone in the Indian gaming management staff that they needed to take a look at paragraph (b) and consult with the tribes on this matter?

Answer. I don't think I did. And that's because this executive memorandum is common knowledge.

[Meisner Deposition Exhibit No. KM-13 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I place before Mr. Meisner what has been marked as KM-13. It is a letter to Secretary Bruce Babbitt, Department of the Interior, from Congressman Steve Gunderson dated April 28, 1995.

I will ask you to take a look over this, but I only have a specific question on page 1.

Answer. Okay.

Question. The second to the last sentence of page 1 reads, "According to your office, since Congress passed the Indian Gaming Regulatory Act," and he has just got IGRA here, "in 1988, the Secretary of the Interior has never," and that is underlined, "approved the acquisition of off-reservation land to be used for casino gambling." Is that a true statement, to your knowledge?

Answer. No.

Question. Do you know who in the Secretary's office would be tasked with communicating with Congressmen?

Answer. No. It could have been—there's a press—there's a Congressional and Legislative Affairs Office within the Office of the Secretary, actually, and it would be likely that someone from that office would have, but I don't know specifically in this case who it was.

Question. Sure. And I wasn't asking specifically in this case, because it would be not reasonable for you to know, necessarily.

Were you aware of any communications between the Department of the Interior and the White House?

Answer. I don't recall any.

Mr. ELLIOTT. Relative to the Hudson Dog Track?

EXAMINATION BY MR. DOLD:

Question. Relative to the Hudson Dog Track, of course. We would all be in big trouble if there was no communication on anything.

Answer. I'm assuming we are talking about the Dog Track.

Question. Yes, we are talking about the Dog Track.

Answer. Not to my recollection. I certainly was not a participant in any.

Question. Did you ever hear about anybody talking about consulting with the White House?

Answer. I don't remember hearing about that in relation to this project.

Question. Were you aware of any communications, written or oral, between the Department of the Interior and the Democratic National Committee?

Answer. No.

Question. And just to round out the matter, do you know of any written or oral communications between the Department of the Interior and the Clinton-Gore '96 campaign?

Answer. No.

Question. And for the record, those are all relating to the Hudson matter that we are talking about.

Answer. Yes.

Question. The Secretary of the Interior has said that the decision to reject the application was supported by the gaming office staff. Do you know if this was ever put in writing besides in a memo from the gaming office staff?

Answer. What do you mean? Do you mean did the Secretary do a memo?

Question. No. Do you know if the support to reject the application was put into a memo form by the gaming office, the Indian gaming management staff?

Answer. You showed me a draft earlier.

Question. That was the draft letter, correct?

Answer. Okay.

Question. Was there ever a memorandum outlining the specifics?

Mr. ELLIOTT. Please clarify the record.

Mr. DOLD. Okay, sure.

Mr. ELLIOTT. I don't think you have shown him a draft letter.

Mr. DOLD. I have shown him the final copy of the final letter.

Mr. ELLIOTT. Right.

Mr. DOLD. Okay, thank you.

The WITNESS. Didn't you show me something that was thick written by—or apparently authored by George Skibine, some memo a few moments ago?

Mr. DOLD. I did.

The WITNESS. That is the only document, since I have seen it, that I can recall. Maybe we should take a quick look at it.

Mr. DOLD. I'd be happy to.

The WITNESS. But in my memory, I don't remember a memorandum.

Mr. YEAGER. Just so the record is clear on this point, do you have any knowledge that this memorandum was authored by George Skibine?

The WITNESS. I don't have personal knowledge of that, but I have heard that.

Mr. YEAGER. Heard that from news accounts?

The WITNESS. I'm not sure where I've heard it, but I've heard it.

EXAMINATION BY MR. DOLD:

Question. Would this be a proposal, in your review of this document here, to—

Answer. This document looks to me like it's a memorandum. It's to the Assistant Secretary through the Deputy Commissioner from George Skibine. It could be a— and it's a draft, and it looks to be a fairly—

Question. Detailed?

Answer [continuing]. Detailed analysis of the issues.

Question. Is that memorandum that you are holding before you a recommendation to reject the application?

Answer. Well, the document speaks for itself, but it is a recommendation. It appears to be a draft recommendation.

Question. Are they recommending to deny the application?

Mr. ELLIOTT. If I might just interject here, it says, "the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests."

Mr. DOLD. Absolutely what the document reads. I have no dispute. Thank you.

Mr. YEAGER. Just so it's clear.

The WITNESS. I mean I can't shed any more light on the document. It really speaks for itself.

Mr. DOLD. Okay.

The WITNESS. It appears that—and I haven't sat here and read the entire document, but it appears from the last paragraph and the first paragraph that they are making a determination on the interest of the tribe in this document, best interest of the tribe. Staff recommends—I'm reading—

Mr. YEAGER. Why don't you take a minute and read the document.

The WITNESS. Okay. I will do that.

Yeah, in the very first paragraph it indicates that the Secretary hasn't made his determination yet. And again, this is a draft on detriment to the surrounding community. "The staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests."

I cannot explain to you what this means.

Mr. DOLD. Okay.

EXAMINATION BY MR. DOLD:

Question. Does the document speak for itself?

Mr. YEAGER. We probably would all agree that the document would speak for itself.

Mr. DOLD. I don't dispute that.

The WITNESS. Okay. I have reread the first paragraph, and the document speaks for itself, and it would appear that this draft talks about whether the acquisition and the gaming facility would be detrimental to the surrounding community.

EXAMINATION BY MR. DOLD:

Question. Is the recommendation, based upon the first paragraph—and I realize that you have not had an opportunity to dive in and review all of the pages of this detailed draft—would that be a recommendation by the staff to reject the tribes' application?

Answer. In this draft—the draft proposes to determine that the acquisition would not be detrimental to the surrounding community, and then recommends that the second prong of the test be completed. That's all that it does, according to the last paragraph.

Question. Okay. Is that a recommendation to reject the application of the tribes?

Answer. No.

Mr. YEAGER. Is it a recommendation to approve the application of the tribes?

The WITNESS. No. And, it's a draft, unsigned.

Mr. DOLD. Of course.

[Meisner Deposition Exhibit No. KM-14 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Meisner another document marked KM-14. It is dated, although the copy might not be as good as I would like, is dated November 15, 1994. It is a memorandum to the Assistant Secretary of Indian affairs, who at the time was Ada Deer, from the Office of the Area Director, who I believe at the

time was Denise Homer. The subject is the request for off-reservation gaming for land in Hudson, Wisconsin.

Have you ever seen this document before, Mr. Meisner?

Answer. I believe I have.

Question. And when have you seen this before?

Answer. I believe that I reviewed this in conjunction with a number of other documents when I was working on the Hudson Bay project. Actually, I specifically remember this one.

Question. Was this recommendation incorrect?

Answer. I don't know.

Question. When you reviewed it, what did you review it for?

Answer. Well, the value of this document for me would be to see what the folks on the ground think, and also to see what the evidence is that they're providing to support their recommendation, and that would be it for me.

Question. What did the folks on the ground think?

Answer. I will have to look at the document for a minute.

Question. Please.

Answer. Okay. The document speaks for itself. On the very last page, page 32, there is a section called recommendations, and it's a short paragraph, and it says: "Based upon the discussion and conclusions provided above, we recommend that the Secretary of the Interior find that the proposed action will be in the best interest of the tribes and that it will not have a detrimental effect on the surrounding community." And they go on to say that they recommend that the decision be made to take this particular parcel into trust for the three tribes for a gaming purpose.

EXAMINATION BY MR. DOLD:

Question. After you reviewed this document—you said you reviewed it to find out what the people on the ground were thinking, and also to look at what they were taking into account when they made their decision—what did you find? Did you find anything wrong with the evidence they used to make their decision?

Answer. Did I find anything wrong with it?

Question. Yes.

Answer. I don't remember exactly what my legal opinion was of this document.

Question. Do you recall if you generally disagreed and felt that the area office was just—they just missed the ball on this one, or—

Answer. I don't necessarily agree or disagree with their recommendation, or I would not have. I would have reviewed this document to see what their recommendation was. But really, it's the role of the Indian gaming management staff to take this thing and determine what their recommendation is going to be.

Question. What was your role in the process in reviewing this?

Answer. Well, since the document is a final document, it's merely another piece of paper in the record before me. And so while it is specific and it's written by the area director out in the field, it would not have been a dispositive sort of document for me, the central office. My client wasn't bound by this.

Question. Okay. Did you draft a memo after reviewing this document?

Answer. I don't remember drafting a memo.

Question. Did you have any meetings with people in the Indian gaming management staff about their recommendations? From the area office, I mean.

Mr. ELLIOTT. The area office's recommendations is what you mean?

Mr. DOLD. Correct, yes.

The WITNESS. I don't remember a specific meeting in response to that document. The application comes to us by way of that document normally, and so we'll receive all of the paper work underneath that memorandum from the field. So what you get is, you get a stack of documents and that thing is on top from the area director with the area director's recommendation. So there wouldn't have been—in my memory, there wasn't a specific meeting held just because that document came in or in response just to that document. That document is like the transmittal memo.

Mr. DOLD. Okay.

EXAMINATION BY MR. DOLD:

Question. Was—did you find anything legally wrong with the area office recommendation?

Answer. I don't remember finding anything legally wrong. I mean I'm not sure what "legally wrong" means, but nothing—I don't remember anything striking me.

Question. That's what I was getting at.

Answer. I don't have any big memory about it. It's—sometimes the central office agrees with the area and sometimes they don't.

Question. Are there deadlines under 151 for State and local governments to send in comments—are you aware of any consultation or comment period under section 151 that is required by the Secretary? I will let you take a look at this.

Mr. YEAGER. Could you just read the cover of that? I just want to see the date, particularly, of that volume.

Mr. DOLD. It's a 1997 volume.

Mr. YEAGER. Current regulations?

The WITNESS. I have been handed a very pretty pink book that is the current CFR, 25 CFR, which I may or may not give back to you because I don't have one. It's opened to the land acquisition regulations. So according to the regulations, and again, they're the best evidence of this,—

Mr. YEAGER. Let me just clarify the question first before the witness answers the question.

Are you asking him to interpret current regulations, or are you asking him to give you his best recollection of what regulations applied at the time the decision was made?

Mr. DOLD. I will do both, I will do both.

Mr. YEAGER. Okay. Which question is pending?

Mr. DOLD. This question is right now, under 151, if he is aware of a consultation which is required by the Secretary under 151.

Mr. YEAGER. Currently?

Mr. DOLD. Currently.

The WITNESS. These regulations state that the State and local governments will be given 30 days in which to provide written comments, and this is under 151, not section 20.

EXAMINATION BY MR. DOLD:

Question. Okay. Now, having said that, did you have knowledge that there was a requirement to do this before you had an opportunity to look at this regulation?

Answer. Did I know at the time that there—

Question. No, right now. I mean did you know before I handed you the book that there was that requirement under 151?

Answer. Oh, that there was a 30-day comment period?

Question. Yeah.

Answer. I probably would have had to have consulted the regulations to remember exactly that there was a 30-day comment period.

Question. Do you recall back in 1995 whether that was also part of the 151 requirements?

Answer. I believe there was a comment period.

Question. Do you know if that was followed in the Hudson casino application?

Answer. I don't know. I don't know. I don't remember specifically whether or not they gave 30 days. I would assume they did.

Mr. YEAGER. Presumably, the regs at the time would disclose whether there is a comment period or not?

The WITNESS. Right. The regs would be the best evidence of themselves.

Mr. DOLD. Right.

[Meisner Deposition Exhibit No. KM-15 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have provided Mr. Meisner what has been marked as KM-15. It is a memorandum to the Assistant Secretary of Indian Affairs from the Office of the Area Director, and this memorandum is dated April 20, 1995. The subject is the trust acquisition request of the St. Croix Meadows Dog Track property.

If I may, there is an attached document on the back of this that should not be part of this exhibit. We have eliminated the letter that was attached to the back, and I have to admit it was my fault since I did the copying on these things, so I apologize to everyone.

The WITNESS. Okay.

EXAMINATION BY MR. DOLD:

Question. Have you ever seen this document before?

Answer. I don't remember. These documents are all starting to look very similar to me. But I don't remember this one.

Question. Okay. At the bottom of the page it goes through some of the material that's been attached to support the trust acquisition. Number one is the title insurance commitment; number two is the Level I hazardous waste survey; number three is the finding of no significant impact; four is the maps of the property; et cetera.

Are these all things that are required by the Department of the Interior?

Answer. All of these are required by the Department of the Interior, yes.

Question. Do you know if there was anything wrong with the title insurance commitment?

Answer. I have no idea.

Question. Would that have been a document that you would have reviewed in your capacity as a solicitor?

Answer. No. Not normally. The area field solicitor's office did this work.

Question. Do you know who was in the field solicitor's office at the time that would have done that?

Answer. No.

Question. The people in the area office, to your knowledge, are they career civil servants, or are they political appointees?

Answer. Which people?

Question. In the area office, that staff the area office for the Department of the Interior?

Answer. I don't know.

Question. On page 3, if I can turn your attention quickly to Page 3, under paragraph B, it says, 25 CFR section 151.10(b), it says, "The need of the individual Indian or the tribe for additional land."

I want to direct your attention, if I may, down to the second paragraph, bottom line—rather, bottom sentence, "To ensure the continuing stream of revenue necessary for tribal economic development, self-sufficiency and a strong tribal government, Tribes must expand its gaming operations beyond the existing facilities."

Answer. Yes.

Question. Was that discussed at all in any of the meetings you attended on this issue?

Answer. Not to my recollection.

Question. Would that have been something that would be taken into account?

Answer. The need for the land would be taken into account under 151, yes.

Mr. ELLIOTT. Counsel, can we take a break?

Mr. DOLD. Sure.

[Brief recess.]

EXAMINATION BY MR. DOLD:

Question. If I can return to I think it is the fourth exhibit, the Hartman memo.

Mr. YEAGER. Which Hartman memo are we talking about?

Mr. DOLD. The one that is signed by Thomas Hartman.

EXAMINATION BY MR. DOLD:

Question. And directing your attention, if I may, to page 4, the third paragraph, it says, "Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from the opposing Indian tribes."

Do you know if that was an accurate statement or if that was true?

Answer. I don't have any idea.

Question. If this were true, would it change the view of the validity of the local opposition in your eyes?

Answer. All it means to me is that this person is alleging that the opposition has a funding source.

Question. And I guess my question to you is does that matter; does that matter in the eyes of the Department of Interior?

Answer. All it means to me is they have more money to hire a lobbyist or something.

Mr. YEAGER. I am sort of lost here. I am not sure where we are looking.

Mr. DOLD. It was on page 4, third paragraph, last line.

The WITNESS. I mean, this sentence doesn't indicate to me whether the opposition was created, whether it existed and was subsequently funded. It doesn't really mean anything more than that.

EXAMINATION BY MR. DOLD:

Question. That is fair enough. was there anybody in the central office in D.C. that was tasked with determining what was going on out in Hudson with regard to the local opposition and accusations?

Answer. Well, it would be the BIA management, gaming management staff, would review—I don't know if they are specifically tasked with monitoring the situation

on the ground, but if any inquiries were to be made, it would be the Indian gaming management staff, Tom Hartman, George Skibine, Paula Hart, those folks.

Mr. DOLD. I place before Mr. Meisner what has been marked as KM-16. It is an e-mail from George Skibine to Miltona Wilkins, Tom Hartman, Paula Hart and Tina LaRocque, I guess would be the proper pronunciation, regarding the Hudson Dog Track, dated July 8, 1995.

[Meisner Deposition Exhibit No. KM-16 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. The e-mail reads, "I have left on Tona's desk the redrafted version of the Hudson letter per Duffy and Heather's instructions, along with the disk I used. Please make sure it is put in final form, and brought up to Heather first thing on Monday. Please have copies made for Bob Anderson, Kevin, Troy and Hilda. The Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes area," and it goes on and on, but I will stop there.

There is no reason you would have seen this because it is not addressed to you, but were you given a copy? The reason I ask, it says, "Please have copies made for Bob Anderson, Kevin, Troy and Hilda."

Answer. I don't remember. It is logical to assume that I received a copy of the final letter for review and surnaming. My name is checked off on the e-mail. That indicates to me that they sent it up to me.

Question. Was there any discussion about the timing of the decision?

Answer. Not that I remember.

Mr. ELLIOTT. Other than this e-mail.

EXAMINATION BY MR. DOLD:

Question. Other than the e-mail here?

Answer. I didn't receive this e-mail, and I don't remember the content of this e-mail.

Question. Was it ever discussed in a meeting that the Secretary wanted the decision to be made right away, as it says here, to go out ASAP?

Answer. I have no specific memory of that sort of statement being made in a meeting on this particular issue.

Mr. YEAGER. Are you aware of any involvement whatsoever by Secretary Babbitt in the Hudson casino issue?

The WITNESS. No.

Mr. DOLD. I am showing Mr. Meisner what has been marked as KM-17.

[Meisner Deposition Exhibit No. KM-17 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. It is an e-mail from George Skibine, to Troy Woodward, Kevin Meisner, Hilda Manuel, Paula Hart, Tom Hartman, dated June 28, 1995, and unknown recipient is Heather Sibbison. The subject is the Hudson decision letter.

Answer. Well, here is evidence of consultation here that you were asking me about.

Question. And what is that?

Answer. There is a line that says, "As you recall, we advised the three tribes that IGMS review under section 20 would be completed by the end of the month."

Okay. I have read it.

Question. And the e-mail at the beginning starts, "Please find attached a draft of the Hudson decision letter refusing to take land into trust pursuant to the discretionary authority of the Secretary, and 25 CFR Part 151. IGMS is also drafting a proposed memorandum to the Commissioner concluding that the acquisition is not detrimental to the surrounding community under section 20. That draft will be ready before the end of the week. These two drafts represent the alternatives available to the Secretary, as discussed at previous meetings."

Then it goes on, and as you said before, "As you recall, we advised the three tribes that IGMS review under section 20 would be completed by the end of the month."

Mr. Skibine then goes on to talk about how he is not going to be around for a little bit, he is going off on leave.

Answer. Okay.

Question. Do you recall ever seeing a draft—I'm sorry, a memorandum to the Commissioner concluding that the acquisition is not detrimental to the surrounding community under section 20?

Answer. I don't remember seeing it at that time. You may have shown me something like that today. And, again, that doesn't mean that I didn't see it. You have to understand that I have worked on so many different projects, and this was just

another project for me, and a lot of the work is done by the staff, and my review might be, you know, a 2-hour review 1 day of, you know, weeks of that work, and so I don't really have any specific memory of receiving these e-mails or receiving the documents or necessarily reviewing them, other than what—it is clear that this e-mail went to me.

Question. In your meetings that you had with the staff, Indian gaming management staff, the Solicitor's Office, Heather Sibbison and John Duffy, did you ever discuss giving the Secretary or Michael Anderson, the decision-maker in this case, two drafts to represent the alternatives available to him?

Answer. Do I remember discussing that? I don't remember discussing that. It is typical to give the decision-makers two copies. It is typical to write up a recommendation with a number of options, and I don't mean just under 151 or section 20, I mean just about anything that you send out.

Mr. YEAGER. So you might have two conflicting memoranda, each advocating a different position; is that typical?

The WITNESS. It goes back to my earlier statement that the decision has not been made until the pen hits the paper. The staff is there to recommend and lend their expertise to the decision-maker, the decision-maker sits down and evaluates whatever is before him or her, and goes with you or not.

EXAMINATION BY MR. DOLD:

Question. So the decision could have gone either way until the pen hit the paper?

Answer. That is what I believe.

Question. Do you know John Duffy?

Answer. I worked with him quite a bit.

Question. Do you know where Mr. Duffy is today, where he works presently today?

Answer. I think recently someone told me that he is working for some tribes. I don't have specific knowledge of where he is.

Question. Do you know which tribes he is working for?

Answer. Someone recently told me that he was working for—in some capacity for one of the tribes that was involved in this project. I don't know which tribe.

Question. Okay.

Answer. It's something I heard recently, and I don't remember who told me.

Question. Did Mr. Duffy leave the Department before you did?

Answer. Mr. Duffy left the Secretary's office after I had left the Solicitor's office, but before I left the National Indian Gaming Commission—

Question. Okay.

Answer [continuing]. Which is technically—well, there is some debate about this, but technically part of the Department of the Interior.

Question. Okay. We will save that.

Mr. ELLIOTT. You can investigate that another time.

The WITNESS. We don't want to go down that road, Tim, and I don't, as to whether NIGC is part of the Interior Department.

EXAMINATION BY MR. DOLD:

Question. Has anybody ever discussed with you the political affiliation of any of the applicant tribal members or tribal chiefs?

Answer. Do you mean whether they were Republicans or Democrats?

Question. Or Independent or Communists or whatever.

Answer. No.

Question. I mean, did it ever come up?

Mr. ELLIOTT. Nobody ever mentions monarchists.

EXAMINATION BY MR. DOLD:

Question. Totalitarians, whatever.

Answer. No.

Question. Okay. Has anyone ever mentioned that the Minnesota tribes have been strong Democratic Party supporters?

Answer. For some reason, I know that to be true, but I don't know the source of that knowledge. As you are saying it to me, if it were a true or false question, I would say true. I don't know why I know that, but I—and I don't know when I acquired that knowledge either.

Question. Has anyone ever discussed with you, whether in person or by other means, the political contributions of tribes opposed to the Hudson casino, mainly the Shakopee?

Answer. On this subject, the first time I heard about it was in the newspaper.

Question. After the decision, I assume?

Answer. Long after the decision, when this project became controversial or what have you, long after I was gone from the Department.

Mr. DOLD. I have no further questions at this time.

Mr. YEAGER. If I can take a minute off the record.

[Brief recess.]

Mr. YEAGER. Counsel, do you have anything further before I begin?

Mr. DOLD. Not at this time, no.

EXAMINATION BY MR. YEAGER:

Question. Just a few questions, Mr. Meisner.

The Hudson application was ultimately denied on two separate grounds, or, rather, I should say two separate statutes; is that correct?

Answer. According to the decision letter I reviewed today, the letter cited both 25 CFR 151 and IGRA section 20 as reasons for denying the application.

Question. Just for clarity's sake, the Indian Reorganization Act, pertinent section is section 5 of the statute, is codified, I believe, that section 465 and the regulations implementing it are in part 151 of volume 25 of the Code of Federal Regulations?

Answer. Correct.

Question. We are all talking about the same thing more or less?

Answer. Yes.

Question. You have testified, I think, to some internal debate over the meaning of detriment to the surrounding community under section 20; is that right? Some people thought, apparently, that more objective evidence of detriment was required than others; is that fair to say?

Answer. I can only tell you what I thought, and what I thought was based on what I had seen. You did not have as strong of an argument for denial under section 20 as you did under the Indian Reorganization Act. Obviously somebody didn't agree with me because they still did the section 20 analysis in the letter, and so based on that deduction, the answer to your question is yes, I wouldn't necessarily characterize it as disagreement.

Question. Do you think reasonable people could disagree on that issue?

Answer. Yes.

Question. And would you say that somebody who disagreed with your view must have been subject to improper outside influence?

Answer. No.

Question. Okay. So just to be clear, your view with respect to section 20, and I am not talking about the Secretary's discretionary authority under the Indian Reorganization Act—strike that.

You actually testified you didn't have a view. Your concerns were over the strength of the bases asserted by the Department, so I will withdraw that question.

Some have suggested that career staff recommended approval of the Hudson application, and that political appointees interfered with and overrode that recommendation. To your knowledge, did anyone in the Washington office recommend that the application be approved?

Answer. The answer to that question is in the documents. The drafts can't be considered recommendations. Whatever final document you have that exists, and I don't want to testify from my memory, that was the recommendation, and so while you may have drafts that say one thing or the other, a final document that is signed and goes up, that would be the recommendation. So whatever the record reflects is what happened.

Question. You testified earlier that you were at one time affiliated with the National Indian Gaming Commission, so I just want to ask you a general question about NIGC and the best interest provision of the section 20 analysis.

One of the purposes, and correct me if I am wrong, about this, of the best interest analysis, is to determine whether the specific transaction is fair to the applicant tribes?

Answer. What do you mean fair? You mean are they paying too much money for the land?

Question. Is a partner receiving a disproportionate share of the profits; are the tribes being taken advantage of in the transaction?

Answer. The NIGC, that analysis—an analysis like what you are describing takes place when there is a review of the management contract.

Question. Is that part of the consideration of the fee-to-trust application, review of the management contract?

Answer. Well, there have been projects where the land acquisition and the management contract were going forward at the same time, and so—could you repeat the question?

Question. Well, what I am trying to find out is whether a fee-to-trust application by Indian tribes to develop, let's assume, a profitable casino is always in the best interest of the tribe. What I am asking is, A, whether it's possible that a particular management contract could be oppressive to Indian tribes; is that a possibility?

Answer. Yes.

Question. Is that something that the IGMS takes into consideration when considering the best interest prong of section 20?

Answer. I don't know. I can't remember that, but, again, I worked on both sides of the fence, and so, you know, my distinction may be a little blurred, but I don't remember the BIA formally considering the terms of a management contract in determining whether the land acquisition would be in the best interest of the tribe. However, that would not be unreasonable in a project where it is all going forward at the same time.

Question. When you were involved, whenever you were involved in the Hudson casino application, do you recall any discussions about a parking lot deal as part of this?

Answer. No.

Question. Okay. Is it correct to say that the NIGC examines management contracts to determine whether they are oppressive to applicant tribes?

Answer. I wouldn't characterize it like that. The NIGC, under IGRA, does a very detailed review of a management contract to make a number of determinations. The biggest one is whether or not, if the management contractor's fee is based on a percentage of the income, whether that percentage is too high.

Mr. DOLD. Is there a legal limit?

The WITNESS. Yes, there certainly is.

Mr. DOLD. What is the legal limit?

The WITNESS. Forty percent is the top number.

Mr. DOLD. Anything over 40 percent would get turned down right away; is that correct?

The WITNESS. Yes, I believe so.

EXAMINATION BY MR. YEAGER:

Question. Would it surprise you to know NIGC sent a letter to the applicant tribes expressing concerns about the management contract in this case?

Answer. That wouldn't surprise me. I don't have any specific information about the management contracts for these tribes, but I can tell you for sure that a letter would definitely issue if the contract folks at the NIGC thought there was a problem.

Mr. DOLD. Why would they draft a letter?

The WITNESS. They always do that. That is part of what they do.

Mr. DOLD. In order to what, get a better contract for it?

The WITNESS. The management contract comes in, and NIGC does—contract staff does a complete financial analysis and shoot it back and tell the applicant everything that is wrong with it, and the applicant can correct the deficiencies, renegotiate with the contractor. There is a lot of back and forth like that at the NIGC.

EXAMINATION BY MR. DOLD:

Question. In the back and forth at the NIGC, if that is not corrected by the tribes, does the casino venture still go forward?

Answer. Well, if the tribe doesn't respond to the contract staff, the contract staff will recommend to the chairman of the NIGC that the project not be approved, but the chairman of the NIGC, as long as he is within the legal limits, can choose to go whichever way he wants to.

Mr. DOLD. But not if it is over the 40 percent?

The WITNESS. I don't feel comfortable without a statute book in front of me, but I do know 60/40 is the maximum.

Mr. DOLD. If it was above that?

The WITNESS. If a contractor is getting 50 percent, you are done right there, it is all over, you will not get a management approval by the chairman of the NIGC.

Mr. DOLD. Which means no casino?

The WITNESS. Which means no management contract. The parties can renegotiate their management contract. The tribe can get a new management contract.

Mr. DOLD. So the tribe gets a new management contract, and if that passes muster, they can go ahead and begin gaming, correct, if it passed the NIGC?

The WITNESS. Sure, and you don't need a management contractor at all. Some tribes manage their own facilities; other tribes have consultants who are not actually managers.

Mr. DOLD. But the management contract is a function of the NIGC review?

The WITNESS. If you want a management contract to be in place that is legally binding on the tribe, you have to make it through NIGC approval process.

EXAMINATION BY MR. YEAGER:

Question. Let me just run down the questions. I think you testified to them before, but I want to make sure.

At the time that you were involved in the Hudson application, were you aware of any contacts by outside lobbyists?

Answer. No, I wasn't.

Question. Were you aware of any contributions that—

Answer. Let me rephrase that. I don't remember any such contacts, just like I didn't remember the letter from the Congressman until you showed it to me.

Question. Okay. I am just asking for your recollection.

Answer. I don't want to perjure myself.

Question. No, and I don't want you to perjure yourself either.

Mr. DOLD. Nor do I, for the record.

EXAMINATION BY MR. YEAGER:

Question. Do you recall, or were you aware of, to the best of your recollection, any contacts by White House officials to people involved in the Hudson decision?

Answer. I have no personal knowledge of White House contacts.

Question. Were you aware, to the best of your recollection, of any contacts by officials of the Democratic National Committee?

Answer. No.

Question. Do you have any reason whatsoever to believe that this decision was reached or influenced by improper outside contacts?

Answer. No. I have no knowledge of anything like that. The first time I heard about it was in the newspaper.

Question. Do you believe that this decision was reached on the merits?

Answer. I like to believe that all Department of the Interior decisions are reached on the merits, because that is the way the system is supposed to work, and so, yes, I believe that it was.

Question. You believe this decision was reached on the merits?

Answer. Yes.

Question. And without undue or any political interference by outside interests?

Answer. I never saw any evidence of that, and so I—and since I never saw any evidence, I can't believe anything but the normal—to the extent there is a normal process for such an unusual application, procedure was followed.

Mr. ELLIOTT. Counsel, are you done?

Mr. YEAGER. Go ahead.

Mr. ELLIOTT. I wanted to note it was 3:00 o'clock, and I didn't know if you had a lot more to go.

Mr. YEAGER. I am finished. If you have anything else, Mr. Dold.

Mr. DOLD. No, I think that pretty much wraps it up for me. Counsel was kind enough to let me interject my questions a moment ago, so, Mr. Meisner, on behalf of Members of the Majority, and Mr. Eynon and myself, I sincerely thank you for coming down voluntarily today and hope you have a safe trip back up to Connecticut.

[Whereupon, at 3:02 p.m., the deposition concluded.]

[The exhibits referred to follow:]

STATEMENT OF SECRETARY BRUCE RABBITT
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
OCTOBER 30, 1997

I am glad to have an opportunity to set the record straight on the Hudson casino matter. Let me start with some plain facts that should dispel in fair minds the clouds of unwarranted suspicion that have been raised about it.

First, I had no communications with Harold Ickes or anyone else at the White House about the Interior Department's consideration of a request by three Wisconsin Chippewa tribes that the United States acquire a parcel of off-reservation land in Hudson, Wisconsin so that the tribes could open a casino on it in partnership with a failing dog racing track. I had no communications with Mr. Ickes or anyone else at the White House about either the substance or the timing of the Department's decision. I have since been told that Mr. Ickes' subordinates communicated with my subordinates on three occasions. I was not aware of those communications before the Department's decision on July 14, 1995. I do not believe that those communications involved any attempt by the White House to exert influence on the Department's decision in the Hudson case.

Second, I had no communications with Donald Fowler or anyone else at the Democratic National Committee concerning the Hudson matter.

Third, I did not personally make the decision to deny the Hudson application, nor did I participate in Department deliberations relating to the application. The decision, however, was made on my watch, and I take full responsibility for it. Furthermore, I agree with it.



Fourth, the Department based its decision solely on the criteria set forth in Section 20 of the Indian Gaming Regulatory Act. Let me be very clear why this decision was made, and could not properly have been made any other way. Under the Indian Gaming law, and this is a very important point, if tribes wish to place a casino off their own reservations, as in the Hudson case, then the law imposes stringent tests for Departmental approval. The law requires a finding that the casino would not be detrimental to the surrounding community. This determination must be made after consultation with local officials, including officials of other nearby Indian tribes. With respect to this criterion, the Department in this Administration has adhered to a policy that off-reservation gaming will not be imposed on communities that do not want it. In this case, the three Chippewa tribes requested that we acquire off-reservation land to open a casino located within the City of Hudson, which is 85 miles from the nearest of their three reservations. So we had to consider the application under the stringent rules for off-reservation casinos. Under Department policy, the only fair way to make this determination is to give great weight to the view of local elected officials and tribal leaders. In this case, the City Council of Hudson passed a resolution opposing an Indian casino in Hudson. The City Council of Troy, Wisconsin, a nearby community, also passed a resolution opposing an Indian casino in Hudson. The elected state representative from that district in Wisconsin strongly opposed it, as did the Congressman representing the district. Many other elected officials from the region also weighed in against the casino, including Senator Feingold of Wisconsin, Senator Wellstone of Minnesota, and Congressmen Oberstar, Sabo, Vento, Ramstad, Peterson, Minge and Luther, all of Minnesota. In addition, a tribe which has an on-reservation casino within 50 miles of Hudson strongly opposed the proposal.

This virtually unanimous opposition of local governments, including the nearby St. Croix tribe, required the Department to reject the application. This was the recommendation of the senior civil servant responsible for the matter, and I fully support the decision that was made on the basis of that recommendation. (A copy of the decision is attached.)

Fifth, it is not true, as some have alleged, that political appointees in the Department overruled a career civil servant recommendation that the Department approve the Hudson application. In fact, the eighteen-year career civil servant who headed the Indian Gaming Management Staff received both favorable and unfavorable recommendations from his subordinates and reached his own conclusion that the Department should deny the application in view of the strong community opposition. He made that recommendation to the Deputy Assistant Secretary for Indian Affairs who, in consultation with the Solicitor's Office and others in the Office of the Secretary, agreed with the recommendation and issued a decision to that effect.

Sixth, I had no knowledge as to whether lobbyists on one side or the other of the Hudson issue had sought the help of the Democratic National Committee on this matter. But to whatever extent this happened, I can say with conviction that it did not affect the substance or the timing of the Department's decision.

In sum, the allegations that there was improper White House or DNC influence and that I was a conduit for that influence are demonstrably false. There is no connection at either end of the alleged conduit. At one end, as I have stated, I did not speak to Mr. Ickes or anyone else at the White House or at the DNC; and, at the other end, I did not direct my

subordinates to reach any particular decision on this matter, although during my watch the Department's policy has been not to approve off-reservation Indian gaming establishments over the objections of reluctant communities. The Hudson decision reflected that policy and nothing else.

That should end this matter, and I suppose it would have ended the matter had I not muddled the waters somewhat in my letters to Senators McCain and Thompson in describing a meeting I had with Mr. Paul Eckstein on July 14, 1997. This is what happened:

Mr. Eckstein and I had been colleagues in law school and law practice. After I became Secretary, Mr. Eckstein, who practiced in Phoenix, came to represent clients in Wisconsin who supported the Hudson application. On July 14, Mr. Eckstein was visiting other offices at the Department to urge the Department to delay a decision in the Hudson case, which was ready to be made and released that day. Mr. Eckstein then asked to meet with me. Against my better judgment, I acceded to Mr. Eckstein's request. When he persistently pressed for a delay in the decision, I sought to terminate the meeting. I do not recall exactly what was said. On reflection, I probably said that Mr. Ickes, the Department's point of contact on many Interior matters, wanted the Department to decide the matter promptly. If I said that, it was just an awkward effort to terminate an uncomfortable meeting on a personally sympathetic note. But, as I have said here today, I had no such communication with Mr. Ickes or anyone else from the White House.

It has been reported that Mr. Eckstein recently made the additional assertion that I also mentioned campaign contributions from Indian tribes in this context. I have no recollection of doing so, or of discussing any such contributions with anyone from the White

House, the DNC, or anyone else.

If my letters to Senators McCain and Thompson caused confusion, then I must and do apologize to them and to the Committee. I certainly had no intention of misleading anyone in either letter. My best recollection of the facts is as I have just stated them.

The bottom line is that the Department's decision on the Hudson matter was based solely on the Department's policy not to approve off-reservation Indian gaming applications over community opposition. The record before the Department showed strong, official community opposition to the Hudson proposal. And there was no effort by the White House, directed toward me or, to my knowledge, to others in the Department, to influence the substance or even the timing of the Department's decision.

I hope I have clarified this issue. I would be pleased to answer your questions.

PHOTOGRAPHED
BY THE NATIONAL ARCHIVES
REF ID: A63581

~~FILED IN 100~~
No Casino Favoritism

To the Editor.

William Safire (column, Dec. 31) jumps to erroneous conclusions as to why the Interior Department denied the application by three Wisconsin tribes to establish a casino 85 to 188 miles from their reservation.

It was the right decision, made for the right reasons, and I have told the truth about it. This department does not force off-reservation casinos upon unwilling communities. City councils of the towns of Hudson and Troy, as well as three senators from both political parties, seven Minnesota members of Congress, the Republican Governor of Wisconsin and many others opposed the casino.

Mr. Safire opines that Harold M. Ickes "caused heat to be put on" me to deny the application. The facts, spread across a voluminous record, prove otherwise. I did not participate in the decision, and as I have said in sworn testimony, I have never spoken to Mr. Ickes — nor to anyone else at the White House or the Democratic National Committee — about this matter.

Mr. Safire falsely asserts that a "staff recommendation" approving the casino was changed for political reasons. In fact, the draft memorandum cites only the criteria to be considered in determining local opposition, not whether the casino should be approved. The decision to deny was based on the recommendation of the senior civil servant in the gaming office and supported by his staff. They testified they were unaware of any contributions by interested tribes or of any communications between the tribes and the White House or the D.N.C.

BRUCE BABBITT
 Secretary of Interior
 Washington, Jan. 2, 1998



Tw0004

[24] From: George Skibine at -IOSIAE 6/6/95 2:34PM (952 bytes: 1 ln)
 To: DAVE ETHERIDGE at -DOI/SOL_HQ, KEVIN MEISNER at -DOI/SOL_HQ, TROY WOODWARD
 at -DOI/SOL_HQ
 Receipt Requested
 Subject: discretionary authority to take land into trust

----- Message Contents -----

Text item 1: Text_1

As you know, I am drafting a document relating to the acquisition of the Hudson dog track by three Indian tribes in Wisconsin. The letter will decline to take the land into trust pursuant to the IRA and Part 151 relying on the discretionary authority of the Secretary not to take such land into trust. Are you aware of any cases addressing the Secretary's authority to refuse to take land into trust. The acquisition is for gaming purposes, but we want to avoid making a determination under section 20 of IGRA.

Document provided pursuant
to Confidential subpoena





United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240BY MAILING ORDER TO
Indian Gaming Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff *[Signature]*

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)¹

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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¹ References are to the application documents submitted by the Minneapolis Area Office.

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Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

- Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
- Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
- Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

- 1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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- 2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
- 3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
- 4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
- 5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**)
- 6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
- 7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
- 8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
- 9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
- 10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
- 11) Chairman, Bois Forte (Net Lake) Reservation Business Committee (Vol. III, Tab 16***)
- 12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
- 13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
- 14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
- 15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
- 16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
- 17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
- 18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
- 19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab

***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 -- stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

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County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment (\$150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not viable, the Tribes and the MAO reach an opposite conclusion.

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The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1.4% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the \$22,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its *Global Gaming Almanac 1995*, is expected to increase to \$1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

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The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin

In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes

On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of \$450 million in 1993, and \$495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be \$114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were \$80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of \$480 million, a Non-Minneapolis Gaming Market of \$220 million, and a Wisconsin Market of \$500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

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Wisconsin market is 25 % of the state total, the total market available to the six Minneapolis market casinos is over \$600 million.

The projected Hudson market share of \$80 to \$115 million is 13 % to 19 % of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by \$50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5 % (\$25 million). Therefore, only \$5 to \$40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of \$1 to \$8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a \$96.8 million net profit in 1993. A reduction of \$8 million would be about 8 %, assuming that net revenue decreased the full amount of the gross revenue reduction. At \$96.8 million, the per enrolled member profit at Mystic Lake is \$396,700. Reduced by \$8 million, the amount would be \$363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82 % of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from \$25 million in 1995 to \$12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

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Market Saturation.

The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of \$500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts**1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY**

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers

The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime

Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

Hudson Dog Track Application

3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level

The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns

One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values

An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bierangel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkad, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase

Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

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Hudson Dog Track Application

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities

St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning

According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water

The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage

The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads

The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

Hudson Dog Track Application

The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, "... it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

Hudson Dog Track Application

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects \$42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of \$18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay \$1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

Hudson Dog Track Application

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

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Hudson Dog Track Application

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

Hudson Dog Track Application

are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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Hudson Dog Track Application

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



JUL 14 1995

Honorable Rose M. Gurnoe
Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Honorable Alfred Trepania
Tribal Chairperson
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Honorable Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520



Dear Ms. Gurnoe and Messrs. Trepania and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes. Following receipt of this recommendation and at the request of nearby Indian tribes, the Secretary extended the period for the submission of comments concerning the impact of this proposed trust acquisition to April 30, 1995.

The property, located in a commercial area in the southeast corner of the City of Hudson, Wisconsin, is approximately 85 miles from the boundaries of the Lac Courte Oreilles Reservation, 165 miles from the boundaries of the Red Cliff Reservation, and 188 miles from the boundaries of the Sokaogon Reservation. The St. Croix Band of Chippewa Indians, one of the eight Wisconsin tribes (not including the three applicant tribes), is located on a reservation within the 50-mile radius used by the Minneapolis Area Director to determine which tribes can be considered "nearby" Indian tribes within the meaning of Section 20 of the Indian Gaming Regulatory Act (IGRA).

Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community.

The decision to place land in trust status is committed to the sound discretion of the Secretary of the Interior. Each case is reviewed and decided on the unique or particular circumstances of the applicant tribe.

For the following reasons, we regret we are unable to concur with the Minneapolis Area Director's recommendation and cannot make a finding that the proposed gaming establishment would not be detrimental to the surrounding community.

The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to this trust acquisition for gaming purposes. In addition, in a March 28, 1995, letter, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District in whose district the St. Croix Meadows Greyhound Track is located, have expressed strong opposition to the proposed acquisition. The communities' and State officials' objections are based on a variety of factors, including increased expenses due to potential growth in traffic congestion and adverse effect on the communities' future residential, industrial and commercial development plans. Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

In addition, the record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin. Their opposition is based on the potential harmful effect of the acquisition on their gaming establishments. The record indicates that the St. Croix Casino in Turtle Lake, which is located within a 50-mile radius of the proposed trust acquisition, would be impacted. And, while competition alone would generally not be enough to conclude that any acquisition would be detrimental, it is a significant factor in this particular case. The Tribes' reservations are located approximately 85, 165, and 188 miles respectively from the proposed acquisition. Rather than seek acquisition of land closer to their own reservations, the Tribes chose to "migrate" to a location in close proximity to another tribe's market area and casino. Without question, St. Croix will suffer a loss of market share and revenues. Thus, we believe the proposed acquisition would be detrimental to the St. Croix Tribe within the meaning of Section 20(b)(1)(A) of the IGRA.

We have also received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway and the potential harmful impact of a casino located one-half mile from the Riverway. We are concerned that the potential impact of the proposed casino on the Riverway was not adequately addressed in environmental documents submitted in connection with the application.

Finally, even if the factors discussed above were insufficient to support our determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors, including the opposition of the local communities, state elected officials and nearby Indian tribes, to decline to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465, to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes. This decision is final for the Department.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Anderson".

Michael J. Anderson
Deputy Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
National Indian Gaming Commission

65 009

469 From: KEVIN MEISNER <1111@ISOL.HQ> 11/11/95 9:36AM (1199 bytes: 16 ln)
 To: TRAY WOODWARD
 Subject: Re: Hudson letter.
 ----- Forwarded with changes -----
 From: KEVIN MEISNER <1111@ISOL.HQ> 11/11/95 9:36AM (1199 bytes: 16 ln)
 To: George Skibine <1111@ISOL.HQ> 11/11/95 9:36AM (1199 bytes: 16 ln)
 Subject: Re: Hudson letter.
 ----- Forwarded with changes -----

Text 11/11/95 11:11 AM

From George Skibine 7-9-95: You should get a redrafted version of the Hudson letter first thing Monday morning. I hope it meets Duffy's direction. If it does not materialize, please call Larry Schwerner. He will be acting IGMS Director until my return.

From Kevin 7-11-95: This letter did not come up Monday morning, it was sent directly to Heather and changes were made. I did not get a copy until Tuesday morning after a discussion with Paula and Larry. Why are we changing our analysis to deny gaming under section 20? I thought after the Friday meeting that everyone agreed on Duffy who we had not yet consulted. I agreed that there was not enough evidence supporting a finding of "detriment" to the surrounding communities under section 20 and therefore we would decline to acquire the land under 11.11.

Document provided pursuant
 to Congressional subpoena





THE SECRETARY OF THE INTERIOR
WASHINGTON

July 19, 1990

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6LRMP 6C

Memorandum

To: Assistant Secretary - Indian Affairs
From: The Secretary *Manuel Lujan Jr.*
Subject: Policy for Placing Lands in Trust Status for American Indians

I have completed review of the report of the Department's Ad Hoc Task Force on Indian Trust Lands and your recommendation, and I am directing the following actions be taken.

It shall be the policy of the Department of the Interior in acquiring lands in trust status for American Indians, located either within or contiguous to the tribal reservation's exterior boundaries, to review such acquisition requests in light of the presently existing Bureau regulations found in 25 CFR 151.10. The Secretarial review of these acquisition requests shall be delegated to the respective Area Directors.

For off-reservation acquisition requests (other than lands contiguous to the reservation), the policy shall be to consider each request on its own merits. These requests shall meet the following criteria:

1. All existing land acquisition regulations found in 25 CFR 151.10; i.e.:
 - a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
 - b) The need of the tribe for additional land;
 - c) The purpose for which the land will be used;
 - d) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from tax rolls;
 - e) Jurisdictional problems and potential conflicts of land use which may arise;



f) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

see note

2. The property is free of all hazardous and toxic material (as required in 602 DM 2).
3. Trust land to be acquired is located within the states in which a tribe or band presently owns trust land. In general, as the distance from the trust or reservation land base increases, the tribe will be required to justify greater economic benefit from the acquisition.
4. In consultation with local, city, county, and state governments, an effort must be made by the tribe to resolve possible conflicts over taxation, zoning and jurisdiction. If the acquisition is opposed or raises unresolved concerns from the governments, the proposal will automatically be referred to the Assistant Secretary for Indian Affairs for review and approval/disapproval.
5. The tribe shall provide an economic development plan specifying the proposed uses for the trust land with a cost/benefit analysis of the proposal.
6. Applications for trust land located within an urbanized, and primarily non-Indian, community must demonstrate that trust status is essential for the planned use of the property and the economic benefits to be realized from said property.
7. Acknowledgment that, after consideration of all local ordinances including (but not limited to) fire safety, building codes, health codes, and zoning requirements, the tribe will adopt standards that provide at least comparable safeguards;

★ In addition to the requirements listed above, all requests to acquire land in trust for gaming purposes will:

1. Be in compliance with the Indian Gaming Regulatory Act (P.L. 100-497);
2. When appropriate, be reviewed by the National Indian Gaming Commission;
3. Approval/disapproval by BIA's Central Office after discussion with the Secretary of the Interior;

- ✓ 4. Inclusion of an analysis by the tribe or band showing that it explored all reasonable alternatives (other than gaming) which would provide equivalent economic benefits from said property;
- ✓ 5. Inclusion of provisions that the appropriate portion of individual winnings from gaming activities will be withheld for taxes by the IRS.

This policy shall be effective upon appropriate public notification and comment.

cc: Solicitor
Assistant Secretary - Policy, Management and Budget

Document provided pursuant
to Court-ordered subpoena

Author: KEVIN MEISNER at -DOI/SOL_HQ
 Date: 7/6/95 10:37 AM
 Priority: Normal
 TO: TROY WOODWARD
 TO: George Skibine at -IOSIAE
 TO: Paula L. Hart at -IOSIAE
 TO: Tom Hartman at -IOSIAE
 TO: Larry Scrivner at -IOSIAE
 Subject: Re: 7/6/95 Meeting on Hudson Dog Track
 ----- Message Contents -----

My view on this matter is that the bald objections of surrounding communities including Indian tribes are not enough evidence of detriment to the surrounding communities to find under section 20 of IGRA that the acquisition for gaming will be detrimental to the surrounding communities.

Specific examples of detriment must be presented by the communities during the consultation period in order for us to determine that there will be actual detriment. A finding of detriment to surrounding communities will not hold up in court without some actual evidence of detriment. In this case the gaming office did not think that the information obtained during the consultation period was enough to show actual detriment to the surrounding communities.

I think that a decision not exercise our discretionary authority to take the land into trust under 151 is enough to show surrounding communities that we take into consideration their opposition and that casinos will not be foisted upon them against their will.



From: KEVIN MEISNER at ~DOI/SOL_HQ

Date: 3/23/95 5:11 PM

Priority: Normal

To: V. Heather Sibbison at ~IOS

: TIM ELLIOTT

CC: TROY WOODWARD

Subject: Letter from Duffy to Congressman Gunderson

----- Message Contents -----

Hi Heather! I'm afraid that Troy will also be out tomorrow. Paula Hart was gone when I called her so I have not been able to talk to her. I tried to send her an E-mail but the message came back not deliverable. Please try her directly tomorrow.

I think the question of whether a Congressman can participate in the State consultation process for taking land into trust for gaming under IGRA (25 U.S.C. 2719(b)(1)(A)) should be answered in the negative. IGRA references "appropriate State and local officials" and provides for the Governor's concurrence but does not mention Federal Congresspersons. My feeling is that it would not be appropriate for Federal Congresspersons to comment but I am also sending this E-mail to Tim Elliot who should be able to shed some further light on this question.

Tim: Heather needs an answer on this question tomorrow for a Duffy letter. Unfortunately I will be out tomorrow and the above is the extent of my understanding of this situation. I am having Bobbi Ware copy the file for you and return the original to Heather. Please keep the copies close at hand. Thanks!

GUNDERSON -

M. Ware



03289

Author: TROY WOODWARD at DOI/SOL_HQ
Date: 7/6/95 8:47 AM
Priority: Urgent
TO: George Skibine at IOSIAE
TO: Paula L. Hart at IOSIAE
TO: Tom Hartman at IOSIAE
TO: Larry Scrivner at IOSIAE
TO: KEVIN MEISNER
Subject: 7/6/95 Meeting on Hudson Dog Track

----- Message Contents -----

I have written a brief narrative about what happened at the meeting with Duffy yesterday. I am including it as an attachment to this letter to keep you informed. Let me know if you have any questions.



03220

July 6, 1995

In a July 5, 1995 meeting attended by Duffy, Heather, Bob Anderson and Troy, the topic of the Hudson Dog Track was discussed. We discussed George's letter for Ada's signature informing the three tribes that the Secretary was declining to take land into trust in accordance with his discretionary authority under 25 C.F.R. § 151.

The main issue discussed was why the letter indicated that the Secretary's denial was under Section 151 and not Section 20 of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-21 (1988). Duffy advocated the position that this was the perfect opportunity to calm the fears of local communities that Indian gaming would not be foisted upon them without their consent. Duffy thinks that the local communities may veto off-reservation Indian gaming by objecting during the consultation process of Section 20. I expressed the opinion, advocated by George and which we have used to evaluate objections in the past, that the consultation process does not provide for an absolute veto by a mere objection, but requires that the objection be accompanied by evidence that the gaming establishment will actually have a detrimental impact (economic, social, developmental, etc.).

Bob agreed with Duffy in this case because a local Indian tribe, the St. Croix Chippewa, objected to the gaming establishment. (check to see that there is a local tribe) Therefore this decision could have the calming effect that Duffy wants without inflexibly locking the department into this policy because this case is easily distinguishable, i.e., there will not be many cases where a tribe wants to locate a casino near a neighboring tribe.

The upshot of the meeting was that Duffy wants the letter rewritten to include a further reason for denying to take the land into trust under Section 20 because the consultation process resulted in vehement and wide-spread local government and nearby Indian tribes' opposition to locating a casino at this site. THW.

HML document = 7

DRAFT

Indian Gaming Management
MS-2070

Document provided pursuant to
Congressional subpoena

To: Assistant Secretary - Indian Affairs

Through: Deputy Commissioner of Indian Affairs

From: George T. Skibine
Director, Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte
Oreilles Band, and the Red Cliff Band to Place Land
Located in Hudson, Wisconsin, in Trust for Gaming
Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)¹

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all

¹ References are to the application documents submitted by the Minneapolis Area Office.

DRAFT

Document provided pursuant
to Congressional subpoena

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of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables. Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period was extended to April 30, 1995, by the Office of the Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of

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other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI
(Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

- 1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)
- 2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
- 3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
- 4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
- 5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**)
- 6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
- 7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
- 8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
- 9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
- 10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
- 11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
- 12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
- 13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
- 14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)

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- 15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
- 16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
- 17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
- 18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
- 19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab

***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in stating that "it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

No consultation with other State officials was solicited by the MAO. Shiela E. Harsdorf, State Representative, and twenty-eight other Representatives and State Senators sent a letter to the Secretary, dated March 28, 1995, expressing "strong opposition to the expansion of off-reservation casino-style gambling in the State of Wisconsin." The letter addresses four areas of detrimental impact.

First, the signatories cite the removal of land from the local property tax rolls. In the Findings of Fact, the MAO cites the Agreement for Government Services as evidence that the detrimental impact of placing land in trust has been mitigated. The applicant Tribes assert that the track will close, if it is not purchased by Indians, and all revenue to the local governments will cease, a potential detrimental effect of not acquiring the land in trust.

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Second, the representatives assert that "expansion of gambling is contrary to public will in Wisconsin." Elections in 1993 are cited in support. However, the 1993 referenda were primarily technical in nature, to bring the State constitution into conformance with the State-operated lottery. The representatives' letter states, "This advisory referendum showed strong support for limiting gambling to . . . dog tracks, state lottery games and existing tribal casinos." Public policy in Wisconsin embraces a State lottery and several types of Class III gaming.

Third, the letter says that off-reservation gambling may not foster economic development within the tribal nations. "People will be unwilling to travel long distances to casinos and bingo halls located in less-populous regions," says the letter. While the competitive impact of another casino is expected to affect existing Indian gaming operations, the three applicant Tribes are among those tribes in less-populous regions, who cannot draw significant customers from the market area of tribes with more urban locations. They seek to promote economic development by improving their business location.

Last, Representative Harsdorf states, "Many municipalities feel that the expansions have created tense racial atmospheres and that crime rates have increased. It is also unclear whether all tribes have benefitted from the IGRA." The Agreement for Government Services specifically addresses the impact of crime, and its mitigation. No information on racism or the disparate impact of IGRA is supplied. It is not clear that racism is impacted either by approval or disapproval of the application.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994

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Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter, stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

The Supervisors of the Town of Troy passed a resolution on December 12, 1994 in response to the Finding Of No Significant Impact (FONSI). The resolution restated the town's "vigorous objection to casino gambling at the St. Croix Meadows Facility," and reasserted "that casino gambling at the St. Croix Greyhound Racing Facility will be detrimental to the surrounding community." No evidence of detrimental impact was included in the resolution. The resolution was not submitted to the Department Interior in the application package, but was an attachment to a letter to the Secretary from William H.H. Cranmer, February 28, 1995. Neither the Town of Troy or Dr. Cranmer appealed the FONSI.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

Several thousand cards, letters, and petition signatures have been received in support of an Indian casino at the Hudson dog track.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that

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the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "We cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

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Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment (\$150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1 1/3% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all business-

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es, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to \$1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota

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casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin

In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes

On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of \$450 million in 1993, and \$495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be \$114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were \$80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market

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of \$480 million, a Non-Minneapolis Gaming Market of \$220 million, and a Wisconsin Market of \$500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over \$600 million.

The projected Hudson market share of \$80 to \$115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by \$50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% (\$25 million). Therefore, only \$5 to \$40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of \$1 to \$8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a \$96.8 million net profit in 1993. A reduction of \$8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At \$96.8 million, the per enrolled member profit at Mystic Lake is \$396,700. Reduced by \$8 million, the amount would be \$363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

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It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from \$25 million in 1995 to \$12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

Market Saturation.

The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of \$500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers

The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were

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received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime

Hudson Police Dept. Crime & Arrests, (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the St. Paul Pioneer Press with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell 3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level

The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns

One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

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IV. Property Values

An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase

Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500, and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters' estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than

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currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities

St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning

According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water

The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage

The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

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V. Roads

The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94. The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

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3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects \$42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of \$18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

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Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay \$1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement for Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

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Hudson Dog Track Application

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in

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Hudson Dog Track Application

reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto*

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Hudson Dog Track Application

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giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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to Congressional subpoena

Hudson Dog Track Application

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Citation	FOUND DOCUMENT	Database	Mode
FR 22951		PRES	Page
,94 WL 163120 (Pres.)			
Publication page references are not available for this document.)			

Memorandum

Government-to-Government Relations With Native American Tribal Governments

April 29, 1994

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

- In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:
- (a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.
 - (b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.
 - (c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.
 - (d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.
 - (e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.
 - (f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal Copr. (C) West 1997 No Claim to Orig. U.S. Govt. Works



5, FR 22951

PAGE 2

(Publication page references are not available for this document.)
programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM CLINTON
THE WHITE HOUSE,
Washington, April 29, 1994.

59 FR 22951, 1994 WL 163120 (Pres.)
END OF DOCUMENT

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Fax Message From
Congressman

2185 Rayburn House Office Building
Washington, D.C. 20515-4903

Steve Gunderson

Third Congressional District, Wisconsin

cc: *Greg Skrine 10/25/95*
Done

TO: HEATHER SIBBON
ASSISTANT TO THE COUNSELOR

FAX NUMBER: _____ PHONE NUMBER: _____

FROM: STEVE GUNDERSON DAVE GUNDERSEN
FRAN MCNAUGHT JOAN JACKSON
X TIM BARTL KEVEN KENNEDY
JOHN FRANK TED REBARBER
JANET PRENE SCOTT SMITH
INTERM SCOTT STAFFORD

*File:
Dog track*

DATE: 5/1/95 # PAGES 4 (INCLUDING COVER SHEET)

COMMENTS: Comment Letter: Hudson Rec-to-Test
Acquisition

This was delivered to 7229 @ 12:15 5/1



Antigo Silt Loam



STEVE GUNDERSON

for District 1, Wisconsin

LEGISLATIVE

AGRICULTURE, FOREST, COMMERCE AND
ECONOMIC AND EDUCATIONAL
OPPORTUNITIES COMMITTEES

Congress of the United States
House of Representatives
Washington, DC 20515-4903

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April 28, 1995

The Honorable Bruce Babbitt
Secretary
Department of Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Secretary Babbitt:

I am writing on behalf of my constituents to express my opposition to the fee to trust acquisition of the St. Croix Meadows greyhound track by the Red Cliff, Mole Lake, and Lac Courte Oreilles bands of the Chippewa Tribe pending before the Bureau of Indian Affairs. As you know, the track is located in Hudson, Wisconsin, in the western part of my district.

The debate over adding casino gambling at the dog track has inflamed passions of Hudson residents for several years and has been a prominent issue in several local elections. Until now, I have remained neutral, in part because I believed that the residents of St. Croix county should be allowed to develop their own opinions without interference from Washington. I also remained neutral because I was unclear whether the Indian Gaming Regulatory Act (IGRA) permitted my input. However, since your office has informed me that I may comment, I have considered the historical perspectives of the debate, the national significance of this decision, and the views of my constituents. I have concluded that the most prudent course would be for the Department to reject casino gambling at St. Croix Meadows.

I oppose the expansion of gaming at the Hudson dog track because it would set a national precedent for off-reservation casino gambling facilities. Section 20(b) of the IGRA provides that the Secretary of the Interior, with the governor's approval, may acquire land outside of an established reservation for gaming purposes if the Secretary determines that the acquisition is in the tribe's best interest and would not be detrimental to the surrounding community. According to your office, since Congress passed the IGRA in 1988, the Secretary of Interior has never approved the acquisition of off-reservation land to be used for casino gambling. This appears to indicate that the section was intended to apply only in exceptional cases.

02875

The Honorable Bruce Babbitt
 April 28, 1995
 Page 2

Congress passed the IGRA in large part to promote Native American economic development through gaming. At the same time, the Act sought to protect against the abuses of a burgeoning, but unregulated gaming industry. Most tribes that have developed gaming on their reservations have succeeded in significantly improving the economic conditions of their members.

Under existing compacts with the State of Wisconsin, each of the three bands applying to develop a casino in Hudson is allowed to build two casinos with blackjack facilities on its reservation. Each presently has one casino with blackjack facilities on its reservation. To increase economic opportunities for its members, each tribe may build an additional facility with blackjack without treading into the precedent-setting waters of off-reservation casinos. If your office approved the acquisition of the dog track, a national precedent would be set to encourage the development of additional off-reservation facilities when on-reservation development options are still available. For this reason, Hudson is not the place to break new ground.

In addition to setting a new precedent, proceeding with the acquisition would be detrimental to the Hudson area by further eroding relations among residents and limiting opportunities for economic development. Area residents and their local representatives oppose casino gambling. The passage of legislation allowing the dog track created many deep wounds in the city. In 1991, when a casino at the dog track was first debated, the City of Hudson recalled its mayor because he supported gaming. A year later, the City Council adopted a resolution opposing Indian gaming at the dog track. In February, the Council again voted to reject a casino.

Voters have increasingly opposed Indian gaming at the dog track. In 1992, the City of Hudson held a referendum which asked whether residents supported the transfer of the land to an Indian tribe if unspecified financial conditions were met. The results were 1,352 voters in support of the transfer and 1,288 against. However, in a 1993 statewide referendum which asked whether residents wanted to expand Indian gaming in Wisconsin, 65% of St. Croix County residents voted against expansion. In the adjoining Troy township, from which land was annexed for the track, 85% of the residents voted against expansion.

In sum, it is my conclusion that allowing a casino at the St. Croix Meadows facility would set an expansive national precedent for off-reservation gaming where none is needed. The approval would have detrimental effects on the residents by creating further divisiveness in a city where civic harmony has already been severely damaged. Further, the recent votes provide ample statistical proof of public opinion. For these reasons, I oppose the expansion of casino gambling to the St. Croix Meadows track.

The Honorable Bruce Babbitt
April 28, 1995
Page 3

I would appreciate a status report on the acquisition at your earliest convenience.
Thank you for your consideration.

Best regards,

A handwritten signature in black ink, appearing to read "Steve Gunderson". The signature is fluid and cursive, with the first name "Steve" written in a larger, more prominent script than the last name "Gunderson".

Steve Gunderson
Member of Congress

SG:tb

The only land transaction approved since enactment of IGRA for an off-reservation Class II gaming facility was for the Forest County Potawatomi Tribe. The property is located in Milwaukee, Wisconsin and the transaction was completed in 1990 prior to the establishment of the office of the Indian Gaming Management Staff and the established items to ascertain that the transaction meets the two-part determination required in Section 20.

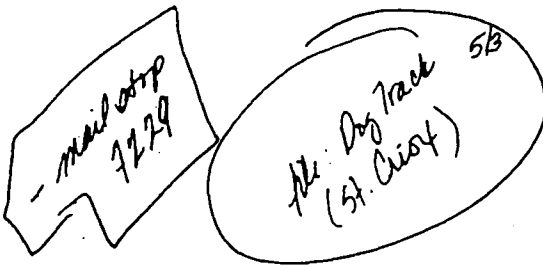
Two acquisitions were approved for lands located off-former-recognized reservations in the State of Oklahoma: The Cherokee Nation of Oklahoma acquired two parcels: one in West Siloam Springs, OK for a total of 7.808 acres (approved by Central Office: 01/18/94 and the second in Rogers County, OK for a total of 15.66 acres (approved by Central Office: 09/24/93); both are for Class II gaming facilities.

Two acquisitions were approved for land "contiguous to the reservation" for two tribes in Louisiana: Tunica-Biloxi Tribe acquired 21.054 acres in Avoyelles Parish, LA for a Class III gaming facility (approved by Central Office: 11/15/93); and Coushatta Tribe acquired 531 acres in Allen Parish, LA for a Class III gaming facility (approved by Central Office: 09/30/94).

One land acquisition was approved for a tribe with no reservation on enactment date of the IGRA and the land was not in Oklahoma: Sisseton-Wahpeton Sioux Tribe of Lake Traverse Reservation acquired 143.13 acres in Richland County, North Dakota for a Class III gaming facility (approved by Central Office: 09/30/94).

Three transactions have been prepared for off-reservation acquisitions for Class III gaming facilities in the States of Oregon, Louisiana and Michigan. None received the concurrence of the Governor; consequently, none of the proposals were taken in trust.

*Get it to him Monday
5/1*





Tribal Operations

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
MINNEAPOLIS AREA OFFICE
111 SOUTH 11TH AVENUE
MINNEAPOLIS, MINNESOTA 55401-1141



JUL 11 1994

MEMORANDUM

TO: Assistant Secretary - Indian Affairs

FROM: Office of the Area Director

SUBJECT: Request for Off-Reservation Gaming for Land in Hudson, Wisconsin

On March 4, 1994, the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes"), together, pursuant to Section 2719(b) of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988), filed an application with the Minneapolis Area Director requesting that the United States take a certain parcel of real property located in Hudson, Wisconsin, into trust for the benefit of the Tribes for gaming purposes. The Tribes do not currently own the property, but they have an agreement to purchase the land if and when the Secretary of the Interior makes the findings necessary under Section 2719, the Governor concurs in the Secretary's findings, the steps necessary to place the land into trust have been completed, the National Indian Gaming Commission approves the management contract and collateral agreements and the Tribes have amended their gaming compacts of 1991 to permit the operation of pari-mutuel greyhound racing.

This memorandum outlines the Minneapolis Area Office's review and analysis of the Tribe's application and transmits; (1) the Area Director's Findings and Recommendations, (2) the comments of the Field Solicitor, Twin Cities, and (3) the Documentary Support required for the Secretary's Determination concerning the request for off-reservation gaming on proposed Trust Acquisition of the Tribes.

1. APPLICATION INFORMATION

A. Sokaogon Tribe: The Sokaogon Chippewa Community of Wisconsin occupy a small reservation in Forest County, Wisconsin with the central community in Mole Lake. There

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are 1,528 persons enrolled in the Tribe. 512 members live on or near the reservation. According to figures provided by the Tribe, 42% are unemployed and actively seeking employment.

The Sokaogon Chippewa Community Tribal Council is authorized by Article VII, Section (e), to manage all economic affairs and enterprises of the Community. The Sokaogon Chippewa Community Tribal Council included two resolutions as part of the Tribes application package. Resolution No. 9-11A-93 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 2-4A-94 approved the St. Croix Meadows-Joint Operating Agreement and authorized the Tribal Chairman to sign the agreement.

B. Lac Courte Oreilles Tribe: The Lac Courte Oreilles Band of Lake Superior Chippewa had a reported enrollment of 5,431 people in 1991. In 1991, 1,923 of these people lived on the reservation and another 1,126 lived within 150 miles of the reservation.

The Lac Courte Oreilles Tribal Governing Board is empowered by Article V, Section 1(f) of the Lac Courte Oreilles Constitution to purchase lands within or without the boundary of the Tribe's reservation. The Tribal Governing Board is empowered by Article V, section 1(h) to engage in any business that will further the social or economic well-being of members of the Band. The Lac Courte Oreilles Governing Board submitted three resolutions as part of the Tribes application package. Resolution No. 93-82 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 94-08 approved the Joint Operating Agreement and directed the Tribal Chairman to execute the agreement on behalf of the Lac Courte Oreilles Band of Lake Superior Chippewa. Resolution 94-09 created the Lac Courte Oreilles Economic Development Commission to act on behalf of Lac Courte Oreilles.

C. Red Cliff Tribe: The Red Cliff Band of Lake Superior Chippewa occupy a small reservation in Bayfield County, Wisconsin, on the shores of Lake Superior. There are 3,180 persons enrolled in the band. 1,651 members live on or near the reservation.

The Red Cliff Tribal Council is authorized by the Red Cliff Constitution Article VI, Section 1(e) to manage all economic affairs and enterprises of the Tribe. The Red Cliff Tribal Council included two resolutions as part of the Tribes application package. Resolution 9/23/93C requests the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust. Resolution 2/7/94A authorized the Tribal Chairperson to sign the Joint Operating Agreement on behalf of the Red Cliff Band of Lake Superior Chippewa and also authorized the Chairperson to take such other actions necessary to effectuate the agreement.

These Tribes continue to have high rates of unemployment and poverty in spite of having developed gaming facilities on their reservations. We agree with the Tribes determination that this is true largely because they are located at great distances away from urban markets.

Each of these Tribes also have relatively small populations and land holdings. The Hudson location will provide the tribes with access to an urban market for the gaming facility. However, since it is unlikely that many of the residents of these three communities will chose to relocate to be employed at this location, the benefits which will accrue to each of these communities will come not from direct employment in the gaming facility, but, rather, from employment and the goods and services which would be generated by the spending of each community's share of the net income.

The average amount estimated to be received by each of the three Tribes over the next five years from the operation of the Hudson Gaming Facility is approximately \$10 million per year. This money would be used by the Tribes to improve health care facilities on their reservations, purchase land, improve housing facilities, improve community and elderly programs, improve educational facilities and as educational grants, and to invest in economic development in the communities.

1. Description of Land:

The Tribes have requested that land located in the City of Hudson, County of St. Croix and State of Wisconsin, be taken into trust pursuant to 25 C.F.R. Parts 151 and 25 U.S.C. § 465 and § 2719. The land is currently owned by Croixland Properties Limited Partnership.

This request is for a parcel of land located in the fractional NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, and SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, Section 6, T28N, R19W, City of Hudson, Saint Croix County, Wisconsin, described as follows:

The fractional NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 6.

ALSO, that part of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 6 described as follows:
Commencing at the NE corner of said Section 6; thence S02°49'01"W 1,891.74 feet along the East line of the fractional NE $\frac{1}{4}$ of said Section 6 to the NE corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 6; thence N02°48'30"E along the west line of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ to the NW corner thereof; thence Easterly along the North line of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ to the NE corner thereof; thence S02°49'01"W, along the East line of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ to the point of beginning.

The properties listed above encompass an area of approximately 55.82 acres currently consisting of the St. Croix Meadows Greyhound Racing Facility. The site is served by all necessary utilities and a highway system which includes Interstate Highway 94.

2. Third Parties:

The Tribes have entered into a Joint Operating Agreement with Galaxy Gaming and Racing Limited Partnership, an affiliate of Crowland, in order to provide management of the proposed gaming facility. We have informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Association. The National Indian Gaming Commission concurred in our determination and the Tribes have requested their approval.

II. GOVERNMENTAL ACTIONS REQUIRED

The process of taking Off-Reservation land into trust requires a tribal applicant to meet the requirements of 25 C.F.R. Part 151 - Land Acquisition, and Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988). Section 2719(b)(1)(A) requires the following two part determination:

"The Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's Determination;"

This report does not contain information written specifically to meet the requirements of 25 C.F.R. Part 151, Land Acquisition. This report only outlines the Minneapolis Area Office's review and analysis of the Tribe's proposal to meet the two part determination required by the Indian Gaming Regulatory Act. 25 C.F.R. Part 151 requires specific actions within real estate services that exceeds Section 2719 action under the Indian Gaming Regulatory Act. If and when it becomes necessary, the requirements of 25 C.F.R. Part 151 will be addressed by the Area Office in a separate document.

The Indian Gaming Regulatory Act has several requirements that have been met by the Tribes; first, all three Tribes have successfully negotiated Class III Gaming Compacts with the State of Wisconsin as required by Section 2710(d)(1)(C) of the Indian Gaming Regulatory Act and the Secretary of Interior published the Approval Notice of the Gaming Compacts in the Federal Register; second, in accordance with 2710(d)(1)(A), each Tribe has adopted tribal gaming ordinances that have been approved by the Chairman of the National Indian Gaming Commission.

II. CONSULTATION PROCESS

The Bureau of Indian Affairs consultations with the City of Hudson, Local Officials, and Tribal Officials are described in detail in the Recommended Findings of Fact and

Conclusions. As the Recommended Findings of Fact and Conclusions indicate, the Tribes' application has received mixed support from the Community and nearby Tribes.

IV DOCUMENTARY RECORD

The Minneapolis Area Office has prepared four volumes of documentary support required for the Secretary's determination. The documentary support consists of documents the Tribes have submitted in support of their application and documents the Area Office has compiled during the course of the review and analysis of this application. The documentary record contains a complete index of documents.

Volume I contains proprietary information that is privileged commercial and financial information, which is confidential and exempt from disclosure pursuant to 5 U.S.C. 552 (b)(4).

V RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the documentary support that was prepared during the course of the review and analysis of the Tribes' Application, the Area Office has prepared the attached Recommended Findings of Fact and Conclusions.

Based upon the Tribes' application, the documentary support and the consultations between the Great Lakes Agency Superintendent, the City of Hudson, St. Croix County, and other federally acknowledged Indian Tribes located in Wisconsin and Minnesota, the Recommended Findings of Fact and Conclusions conclude that allowing gaming on the proposed trust property is in the best interests of the Tribe and its members and would not be detrimental to the surrounding community.

VI RECOMMENDATION

Because the establishment of a gaming facility on the proposed trust land is in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, I recommend that the Secretary determine that the proposed trust property be acquired by the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes for Gaming purposes.


Area Director

Attachments

MINNEAPOLIS AREA OFFICE'S
RECOMMENDED FINDINGS OF
FACT
AND
CONCLUSIONS

November 15, 1994

EOP 064505

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RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

INTRODUCTION:

The Sokaogon Chippewa Community of Wisconsin, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (Collectively referred to as the "Tribes") have entered into an agreement with the current owners (Croixland Properties Limited Partnership or "Croixland") of the St. Croix Meadow Greyhound Park located in the City of Hudson, Wisconsin, to purchase the assets of the pari-mutual dog track. The Tribes have requested that the land currently comprising St. Croix Meadows, as well as land immediately surrounding the dog track (totaling approximately 55 acres), be placed into trust. The stated purpose of the acquisition is to begin Class III gaming at the facility with the introduction of 1,500 - 2,000 slot machines and 30 - 40 blackjack tables.

Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988) states, in part, that lands can be acquired for gaming only if "the Secretary, after consultation with the Indian Tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a Gaming Establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community..." 25 U.S.C. § 2719 (b)(1)(A). The following is the Minneapolis Area Office's analysis and recommendations of the Tribes application under this section.

I. BEST INTEREST OF THE TRIBES

A. GROSS AND NET INCOME TO THE TRIBES:

Two separate market studies were prepared regarding this proposal. One by Arthur Andersen & Co. (AA) (Tab 3)¹ which used the "comparative market analysis approach" to estimate the Hudson market potential, and one by James M. Murray, PhD. (Tab 4) which used the gravity model and Reilly's Law of Retail Gravitation to establish the sphere of influence of the Hudson facility both currently and as projected. Although the specific findings of the two reports do differ significantly in some respects, we will incorporate both reports into our analysis.

The AA Study estimates the total market gaming revenues in the primary market of Minneapolis/St. Paul to be between \$550 - \$630

¹ Unless otherwise stated, the tabs are located in Volume I.

million, with the proposed Hudson Casino share projected to be \$80 million (excluding the dog track) (Tab 3, pages 21 & 22). AA projects Total Revenues for the first year to be \$88,367,000. The Net Income is projected to be \$30,910,000 in the first year of operation. Pursuant to the Joint Operating Agreement (Tab 7D, page 8) each tribe would receive 25% of the net revenue. Thus, under this study, each tribe is projected to receive \$7,727,000 in the first year of operation and \$11,506,000 by the fifth year (V-I, Tab 3, page 30).

Dr. Murphy estimates the total gaming revenues in the primary market to be currently at \$406,906,108 a year (Tab 4, page 15). He estimates the proposed Hudson Casino take (including income from the dog track) would be \$104.1 million in the first year of operation and \$131.4 million by the fifth year (Tab 4, page 18). He projects Net Revenues to be \$31.1 million in the first year and 48.8 million by the fifth year (Tab 5, page 1). Dr. Murphy did not provide an estimate of the total market gaming revenues. However, we note that his estimate of total revenues of \$511,124,739 (Tab 4, page 15) is consistent with the estimate made by the Arthur Andersen study.

The two reports differ notably in amount of gross income projected and the total amount of expenses expected to be incurred by the Hudson Venture in the first year (See Table 1 of this report). As a result, we combined the two reports to calculate a best case scenario and a worst case scenario.

Dr. Murphy does not give a breakdown of the expected expenses since his report focuses more on the overall impact to the Tribes and surrounding community from the spending of the net proceeds. Nevertheless, we feel it is important to include this information since it substantiates the Tribes position.

If you combine Dr. Murphy's total expenses (\$73 million) with AA's estimated Total Revenues (\$88,367,000), the Tribes would net approximately \$3.84 million each (\$5,367,00 multiplied by 25%). This number represents the worst case scenario under a combination of the two studies.

The best case scenario under a combination of the two studies is a Net Revenue of approximately \$46.6 million (\$104.10 million in Gross Revenue under Dr. Murphy's study minus \$57.45 million in total expenses in AA's study) to be divided equally among the three Tribes and current owner. Under this scenario each Tribe would receive \$11.65 million in the first year of operation.

We find that due to the sheer size of the market of the urban area, the Tribes would enjoy a financial benefit well beyond any financial benefits generated from reservation located casinos. Also, an urban location would be more likely to produce a relatively stable annual cash flow for the Tribes. It would also

Table 1

COMPARISON OF THE MARKET STUDIES FOR THE FIRST YEAR OF OPERATION

<u>Revenues:</u>	Arthur Andersen:	Dr. James Murray:
Casino	\$70,000,000	
Dog Track	11,367,000	
Food & Beverage	7,000,000	
<u>Total Gross Revenues:</u>	<u>88,367,000</u>	<u>104,100,000</u>
<u>Expenses:</u>		
Casino	20,300,000	
Dog Track	7,131,000	
Food & Beverage	5,600,000	
G&A, Marketing, Sec, Property	17,673,000	
Operating Expenses		60,000,000
Depreciation	3,111,000	
Interest	3,641,000	
Debt Service per Year		13,000,000
<u>Total Expenses:</u>	<u>57,456,000</u>	<u>73,000,000</u>
PROJECTED NET INCOME:	<u>\$30,911,000</u>	<u>\$31,100,000</u>

provide each Tribe a source of income which it can use to further Self-Determination and economic independence.

B. PROJECTIONS OF MANAGEMENT AND TRIBAL EXPENSES:

For the first five to seven years the Hudson Venture will be operated by the three Tribal Economic Development Commissions and Galaxy Gaming pursuant to the terms of the Joint Operating Agreement (Tab 7D, page 11, § 3.1). We informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Commission. The National Indian Gaming Commission concurred verbally in our determination. The Tribes have submitted the Joint Operating Agreement and the collateral agreements to NIGC for approval.

Under the Joint Operating Agreement, the "Business Board" will have general oversight and authority over the operation. It will be composed of eight persons: two Galaxy Gaming representatives and two representatives from each of the three Tribes (Tab 7D, page 4, § 2.7). The primary management officials include any person with the authority to hire and fire employees and any person with the authority to set working policy (Tab 7D, page 10, § 2.31). The Business Board will unanimously select four of the primary management officials. They include the Chief Executive Officer, General Manager, Chief Financial Officer and the Human Resource Director Id.

The Chief Executive Officer will be a member of the Business Board. This position will be unanimously selected by the Business Board and will be granted the power and authority to oversee the daily business affairs and operations of the Enterprise (Tab 7D, page 5, § 2.9). The CEO is required to report to the Business Board and under the Joint Operating Agreement, will not be able to undermine the Boards authority. Thus, even though the CEO must be a Galaxy Gaming Representative as long as the Financing Debt remains outstanding, the three Tribes will have substantial control of the operation (Tab 7D, page 16, § 5.1).

Each Tribe will also select their own Tribal Inspector. The three Tribal Inspectors will have full access to all aspects of the Enterprise (Tab 7D, page 20, § 5.6.3).

Under the Joint Operating Agreement, each Tribe is guaranteed a minimum monthly payment of \$66,667.67 from the net revenues. Galaxy Gaming will then receive the next \$66,667.67 for that month. Anything over \$266,667.67 for any particular month will be distributed equally between the three Tribes and Galaxy Gaming (Tab 7D, § 2.26 and § 7.1). Galaxy will be entitled to a 25% share in the net revenues for the first seven years of operation with the Tribes maintaining the authority to "buy-out" all of Galaxy's rights in the agreement after the completion of the

fifth full year of the operation (Tab 7D, page 41, § 24).

The Joint Operating Agreement requires Galaxy to loan¹ the Enterprise the amount necessary to fully pay the Tribe for any yearly shortfall of the guaranteed payments (Tab 7D, page 8, § 2.26). However, the market studies indicate that loans will not be necessary to fulfill this minimum monthly obligation.

1. Assumed Liabilities and Nonrecourse Liability:

The Economic Development Commissions (EDCs) of the Tribes have agreed to purchase the St. Croix Meadows real property for \$10.00. The assets necessary to run the operation (the building and improvements constructed on the land) will also be transferred to the EDCs subject to certain obligations of the seller. Under the Asset Purchase Agreement, the obligations will be paid as operating expenses and are referred to as the "Nonrecourse Liability" (Tab 7, pages 6 & 7). They include the debt owed to First Union National Bank of Florida (principal of \$37,900,000 plus certain accrued interest arrearage which has been or will be capitalized) and the debt owed to the First National Bank of Hudson (Principal in the amount of \$1,230,000). Although the agreement provides no limitation on the amount of interest that the Tribes will eventually pay, it does state that "in no event shall the aggregate principal amount of the Nonrecourse Liability exceed \$39,200,000" (Tab 7, page 7).

The EDCs have also agreed to take the assets subject to certain "Assumed Liabilities" (Tab 7, pages 7 & 8). They include the following:

- (a) Real property lease obligations;
- (b) Personal property lease obligations;
- (c) Obligations under contracts and licenses;
- (d) Deposits held by seller under the real property and personal property leases.

The Tribes have not provided the dollar amount of the obligations these assumed liabilities will total. However, we do note the Tribes have estimated a yearly total expenditure in both market studies which includes these expenses.

Croixland will continue to own and pay taxes only on 6.96 acres of land next to the Hudson proposal (Tab 7B). The remaining land will be transferred to the Land Venture and leased to the Tribe's EDCs (Tab 7E). The EDCs will pay all taxes, assessments, water and sewer rents, rates and charges, charges for public utilities,

¹ The interest rate on this loan is equal to the prime commercial lending rate of First Union plus 1% (Tab 7D, page 9, § 2.27).

and maintenance of the Parking Lot Land (Tab 7E, page 7, Article 4).

2. Joint Venture Agreement of Meadows Parking Lot Joint Venture:

Croixland and the Tribes have also agreed to form a joint venture partnership (Tab 7F). It will be called the Meadows Parking Lot Joint Venture and is not scheduled to terminate until December 31, 2045 (Tab 7F, page 6, Article 3). The purpose of this agreement is to transfer ownership of the parking lot to the partnership. To accomplish this, Croixland has agreed to sell the parking lot land to the Joint Venture at closing (Tab 7, page 27, § 9.03(g)). The property shall be deemed to be owned by the Venture as an entity and no Venturer will own the parking lot individually (Tab 7F, page 6, Article 2).

Under the Asset Purchase Agreement, Croixland will transfer the parking lot land to the venture for \$10.00 and the portion of the First Union Debt equal to the fair market value of the parking lot land (Tab 7, page 11, Article III). The venture will then lease the parking lot to the Tribe's EDCs. Thus, the Meadows Parking Lot Joint Venture will be the landlord and the Tribal EDCs will be the tenants under terms of the Parking Lot Lease (Tab 7E). Rent payable by the EDCs under the Net Lease will initially be "a sum equal to 110 percent of the aggregate of the monthly debt service payable over the initial Lease Year with respect to the portion of the... (First Union Debt) allocable to the Demised Premises" (Tab 7E, page 4, Article 3). The annual base rent after the initial lease year will be determined by multiplying the annual base rent for the preceding year by a fraction (adjustment level divided by the base level) *Id.* The lease is to terminate in the year 2018 (Tab 7E, page 2).

We have advised the Tribes of the troublesome aspects of this arrangement. Specifically, we informed the Tribes that the ownership arrangement does not appear to be beneficial to the Tribes and seems likely to cause friction in the future. However, it is our determination that this arrangement, by itself, is not a basis to reject the application.

3. Agreement for Government Services:

The three Tribes, City of Hudson and the County of St. Croix entered into an *Agreement for Government Services* on April 18, 1994 (Tab 9). Under this agreement, the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other services that are under the control of the City or County or are

customarily provided to other commercial properties within the City or County (Tab 9, page 2).

The Tribes have agreed to initially pay the City and County \$1,150,000 for the services id. The payments will be paid on a semi-annual basis beginning on January 31, 1995. The first payment will be pro-rated from the date the land is actually accepted into trust.

Beginning in 1999, the Tribes will begin paying the City and County an amount equal to the allocable amount for the preceding year (\$1,150,000 in 1998 with no adjustments) multiplied by 1.05 (Tab 9, page 3). The following table provides a comparison of the amount the Tribes will initially pay the city and county and the future value of \$1,150,000:

<u>ALLOCABLE AMOUNT PROJECTIONS ASSUMING NO ADJUSTMENT</u>				
<u>Year:</u>	<u>Actual Amount Owed:</u>		<u>Future Value of 1,150,000:¹</u>	
			<u>A</u>	<u>B</u>
1999	1,207,500		1,240,850	1,195,425
2000	1,267,875		1,338,877	1,242,644
2001	1,331,269		1,444,649	1,291,729
2002	1,397,832		1,558,776	1,342,752
2003	1,467,724		1,681,919	1,395,791
2004	1,541,110		1,814,791	1,450,925
2005	1,618,166		1,958,159	1,508,236
2006	1,699,074		2,112,854	1,567,811
2007	1,784,028		2,279,769	1,629,740
2008	1,873,229		2,459,871	1,694,115
10 YEAR TOTALS	15,187,807		17,890,515	14,319,168
2025	4,293,477		8,959,357	3,273,099

As the above chart indicates, the yearly 1.05 increase in the payment by the Tribes to the City and County for services is reasonable. The Office of the Field Solicitor, Twin Cities, has also indicated the Government Services Agreement is an agreement in which the Tribes may participate (Volume II, Tab 2, page 3). Thus, we find this agreement acceptable.

The Agreement for Government Services states that "any real estate taxes and assessments and personal property taxes paid with respect to the Non-Trust Property with respect to any calendar year shall be treated as a credit against the payment by the Tribes of the Allocable Amount (as adjusted) for such

¹ Formula Used to determine the future value:
For Column A: Annual Interest Rate is 7.9% for 1 period a year.
For Column B: Annual Interest Rate is 7.9% for 2 periods a year.

calendar year* (Tab 9, page 4). However, this does not apply to taxes paid by Croixland for improvements or special assessments Id. The Tribes will also receive a total reimbursement from Galaxy Gaming and Racing Limited Partnership in the amount of \$297,500 in years 1995, 1996 and 1997 (Tab 9, page 18). This amount represents the difference in the Tribes proposal and the City's proposal for payment of government services.

The Agreement for Government Services states that the Tribes will cause Croixland to pay the delinquent and overdue real estate taxes and assessments and personal property taxes due through 1993 (Tab 9, page 4). Thus, all encumbrances on the land will be removed prior to placing the land into trust. However, to verify this, we have requested the Tribes submit title evidence prior to beginning the 25 C.F.R. Part 151 process. The Tribes responded by providing a copy of the Title Insurance Commitment (Tab 10). Also see the Tribe's letter to the Minneapolis Area Office dated October 14, 1994 (Volume II, Tab 4).

4. Ground Lease:

This lease agreement is between Croixland Properties Limited Partnership and the Tribe's EDCs. The Asset Purchase Agreement provides that the land will be leased to the Tribe's EDCs at the same time the conveyance of the Assets' takes place and immediately prior to the conveyance of the land (Tab 7, page 3 § 1.01(a)). The Asset Purchase Agreement then calls for the land and the Croixland's interest in the Ground Lease to be conveyed to the Tribes Id. Thus, the Tribes will become the landlord and the EDC's the tenants under the terms of the Ground Lease.

Initially, we had concern over the language in Article I, Section 1.03(d) of the Ground Lease and Article II, Section 2.01 of Asset Purchase Agreement since it appeared as if these agreements required the United States to become the landlord and a party to the Ground Lease. We informed the Tribes that this type of arrangement is not acceptable. As a result, the Tribes and Croixland amended the requisite sections to make clear that the United States, as trustee for the Tribes, will not be assigned or conveyed the landlord's interest in the Ground Lease or have any obligations or responsibilities under its terms (Tab 7, Amendments). We are satisfied that the Ground Lease is now only between the Tribes (as the assignee of the Seller), as landlord, and the EDCs, as tenant.

The Ground Lease is for 25 years and may be extended by the EDCs for an additional 25 year term (Tab 7C, page 1). All rent is payable directly to the Tribes. The EDCs will be required to pay

* We note that the land is not defined as an "Asset" in any of the agreements.

rent of \$12 a year and all costs, expenses and other payments which the EDCs assume or agree to pay. The EDCs will also be required to pay to the Tribes rent from the net revenue pursuant to the terms of the Joint Operating Agreement. The EDCs also agree to pay all real estate taxes, assessments, water and sewer rents, and other governmental charges imposed against the facility, or imposed against any personal property or any Rent or Additional Rent (Tab 7C, page 4, Article 3).

The tenant may construct any building on the land after obtaining approval of the Landlord (Tab 7C, Article 4). The tenant is obligated to provide indemnification for any work on the facility, any use, non-use, possession, occupation, condition, operation, maintenance or management of the facility, any negligence on the part of the Tenant or their agents, contractors, employees, invitee or tenants, and any injury or death to any person or damage to or loss of property occurring in, on or about the facility. Galaxy Gaming is not required to provide any indemnification. The tenant is also required to provide insurance, Galaxy is not required to pay for any of it (Tab 7C, Articles 7 & 8).

5. Activities Loan:

The Joint Operating Agreement is between the Tribe's EDCs and Galaxy Gaming and Racing Limited Partnership. This agreement also provides that Galaxy Gaming will assist the Business Board in securing financing to the EDCs for the funds necessary to renovate and remodel the existing dog track facility and to begin operation. Galaxy guarantees the obtainment of this financing (Tab 7D, page 2, § 1.6).

To fund renovation of the third floor of the existing building, an "Activities Loan" (Tab 7D, page 3, § 2.1) will be made by a third-party lender to the EDCs and Galaxy Gaming and Racing Limited Partnership in an amount of up to \$10,000,000 (any amount over \$5,000,000 must be approved unanimously by the Business Board). This money will be used for costs, expenses and expenditures set forth in the Renovation Budget, for initial working capital as needed and for payments of expenditures necessary to "protect and keep perfected the Activities Loan."

C. BASIS FOR PROJECTIONS AND COMPARISONS:

The Proposed facility will be located at 2200 Carmichael Road in Hudson, Wisconsin. The site is approximately one mile south of the Carmichael Road/Interstate 94 interchange in a rural area in the southeast corner of Hudson. The existing grandstand building of the greyhound track has three floors with over 160,000 square feet of space. The property includes parking for approximately 4,000 vehicles.

The Las Vegas office of Arthur Andersen & Co., an international "Big 6" accounting firm performed a market demand and feasibility study. Dr. James M. Murray, PhD. performed an analysis of the market for the addition of casino games to the existing greyhound track and an analysis of the economic impact of the proposed Venture on the Tribal Reservations and the communities where the proposed facility would be located. We relied heavily on both studies to reach our recommendations and findings.

Our review of the market studies indicates that there was a substantial amount of time involved in accumulating the data in the studies. We find the sources of data to be reliable. The Arthur Andersen & Co. study contains pro forma financials which were reviewed and found to be acceptable by the Minneapolis Area Branch of Credit (Volume II, Tab 5).

D. PROJECTED TRIBAL EMPLOYMENT:

The Tribes have stated they plan to "actively recruit Native American candidates for positions at all levels." For employees at the Hudson Venture, a hiring preference will be given in the following manner: first, to members of the three Tribes and their spouses and children, second, to other Tribal members and third, to local residents from communities surrounding Hudson (Tab 7D, page 22).

Each of the three Tribes have stated that due to the location of their reservations, they do not anticipate many Tribal members who are currently living on the reservations to move to Hudson for employment in the casino (Tab 1, page 4). Since the Lac Courte Oreilles Reservation is located approximately 117 road miles from Hudson, the Red Cliff Reservation is located approximately 221 road miles away and the Sokaogon Reservation is located approximately 290 road miles away from Hudson, we have no reason to dispute the Band's assessment. The Tribes do anticipate 10 - 20 percent of the 1,600 positions at the Hudson Venture to be filled by Tribal members already living near the Hudson, Wisconsin area (Tab 1, page 5).

The three Tribes expect to receive an average of \$10 million annually over the next five years as their share of the profits (Tab 5, S-1). They have identified areas of "high priority" for which this money will be spent at each reservation. We have advised each Tribe that if they are going to provide a per capita payment from their gaming proceed, a Revenue Allocation Plan must be submitted and approved under the December 21, 1992, Guidelines

¹ Activities Identified as High Priorities by all three Bands: improved health care facilities, educational facilities and grants, housing, economic and community development, programs for the elderly, land purchases and community programs.

to Govern the Review and Approval of Per Capita Distribution Plans and Section 2710 of the Indian Gaming Regulatory Act. Currently, only the Sokaogon Community has indicated that per capita payments will be made. The Sokaogon Community did submit a Revenue Allocation Plan. We returned the plan to the Community and recommended minor changes. We expect to approve the plan when these changes are made.

Each Band anticipates increased employment on the reservations due directly to the spending of their share of the net income generated by the Hudson Venture. In his analysis of the economic impact of the proposed Hudson Gaming Facility on the three Tribes, Dr. Murray estimates the creation of 150 new jobs on each reservation over the next five years (Tab 5, 5-1). Although the Tribes may have to recruit non-Indians to fill many of the new positions due to a lack of training, the Tribes anticipate that the majority of these jobs will eventually be held by Tribal members.

E. BASIS FOR PROJECTING THE INCREASE IN TRIBAL EMPLOYMENT:

When we assume the figures provided by Dr. Murphy are accurate, the impact of a total of 450 new jobs on the reservations will have a substantial beneficial impact on tribal unemployment. The following figures provided by the three Tribes bolster this contention (Tab 5):

TRIBE	TOTAL ENROLLMENT:	NUMBER LIVING ON THE RESERVATION:	LABOR FORCE:	UNEMPLOYMENT RATE:
Red Cliff:	3,180	1,651	821	39% (321)
Lac Courte Oreilles:	5,431	1,923	1,362	58% (800)
Sokaogon:	1,528	512	198	42% (83)

Since each Tribe has a high unemployment rate, the jobs created on the reservation will provide incentive to Tribal members to work on the reservation rather than moving to Hudson for employment. Tribal members living off the reservation would also have incentive to move back.

F. PROJECTED BENEFITS FROM TOURISM:

As with any project of this nature, the success of the Tribe's proposed facility will depend on the volume of people/visitors who come to gamble at the Tribe's proposed facility. Based on the Market Analysis prepared by Dr. Murray, the Tribes estimates that 3,184,330 people will visit the facility annually (Tab 4,

page 15). Of that number, 95% are expected to come from the Twin Cities area and are expected to drop \$199,399,166; 5% of the visitors will come from outside the Twin Cities Area and are expected to add \$5 million to the net profit of the facility id

G. PROJECTED TRAINING BENEFITS:

In their cover letter, the three Tribes stated that the Hudson Venture will "provide both jobs and training at the supervisory and managerial levels for our people" (Tab 1, page 5). They plan to implement a cross training internship program to accomplish this goal. The Tribe's representative has stated that the internship program will last one year and will obligate the trainee to stay on an additional year to help train other employees.

Under the Joint Operating Agreement (Tab 7D, § 5.8.2) as positions in the facility become available, preference in recruiting, training, and employment in all job categories of the Enterprise, including management positions, shall be given first to qualified members of the Tribes and their spouses and children; second to qualified members of other Tribes and their spouses and children; third, to residents of the City of Hudson; fourth, to residents of the Township of Troy; fifth, to residents of the County of St. Croix.

E. PROJECTED BENEFITS TO THE TRIBAL COMMUNITIES FROM THE INCREASE IN TRIBAL INCOME:

The Tribes contend that substantial benefits would accrue to their Tribal members and surrounding communities. Specifically, they show the following benefits will result (Tab 1, page 7):

- The creation of approximately 150 new jobs on each reservation.
- The employment will generate an annual average of about \$3 million per Tribe in added earnings for these employees.
- A total of over \$11 million in additional earnings and 600 additional jobs will be created as a recirculation of the gaming revenue.
- The proceeds will be applied to health, education, scholarship funds, housing, elderly care, early child care, land purchases and other community support services and as per-capita payments. The Tribes expect that a substantial increase in the quality of life will be directly experienced by all members.

Our data indicates that the three Tribes have high rates of unemployment and poverty in spite of having developed local

tribal gaming facilities. This is true in part because they are located farther away from urban markets than other tribes in Wisconsin and Minnesota. The Hudson proposal will help remedy this problem by providing these Tribes with access to a urban market for gaming.

As we have already indicated, the Tribes have relatively small populations and land holdings. Thus, the proposal is expected to have a significant positive impact. However, the positive impact is not expected to be employment in the proposed facility, but from the spending of the income by the Tribes on their respective reservations.

I. PROJECTED BENEFITS TO THE RELATIONSHIP BETWEEN THE TRIBES AND SURROUNDING COMMUNITY:

The Tribes anticipate that between 80 and 90 percent of the 1600 employees will be from the non-Indian surrounding community (Tab 5, Page S-2). The Tribes are also committed to providing funding for the increased infrastructure costs to the City of Hudson (Tab 1, page 12). This indicates the Tribes willingness to cooperate with the surrounding community as well as the local governments. Once the Casino goes into operation and begins generating income for the community, we anticipate an improvement in the relationship between those persons now opposed to the Hudson Venture, casino management, and the three Tribes.

J. POSSIBLE ADVERSE IMPACTS ON THE TRIBES AND PLANS FOR DEALING WITH THOSE IMPACTS:

The Tribes have stated that they do not anticipate any adverse impacts as a result of this proposal.

The Minneapolis Area Office recognizes possible conflict between some members of the local community and the proposed management of the Hudson Venture. In fact, a member of the local Hudson community has formed her own activist group to oppose the Casino. The group has submitted a petition in opposition to the Venture and claims to have collected over 3,000 signatures. Please note, the petition was submitted after the City of Hudson, County of St. Croix and the School District of Hudson, held public hearings, made findings and submitted their own comments on the proposal. Thus, we have only provided cursory review of the petition. We have not determined whether all the people who signed the petition are registered voters in the State of Wisconsin or Minnesota. Since the group has not provided any additional specific substantive reasons as to why the Hudson Venture should not be approved, other than those already addressed, we have informed the local activist group that the petitions should be directed to the Governor of Wisconsin.

Nevertheless, we do not regard the possibility of friction

between some members of the local community and the three Tribes or the management of the proposed Venture, as grounds to reject the proposal.

II. NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

A. CONSULTATION:

To satisfy the consultation required by Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719 (1988), the Bureau of Indian Affairs, Minneapolis Area Office, consulted with State and local government officials and nearby tribes on the impacts of the gaming operation to the surrounding community (Volume III). The Bureau's consultation process consisted of letters to local government officials, including the applicant Tribe, seeking responses to several suggested areas of discussion for an analysis of the "best interest of the tribe and its members" and "not detrimental to the surrounding community" determination Id.

1. Consultation with the Governor of the State of Wisconsin:

There has been no consultation with the Governor of Wisconsin by the Minneapolis Area Office or the Great Lakes Agency since it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings.

2. Consultation with the City of Hudson:

(a) Mayor: The Mayor of the City of Hudson, Thomas H. Redner, responded to our request for input by providing detailed material addressing possible impacts on the environmental, social structure, infrastructure, land use patterns, income and employment, the possible need for additional services and compulsive gamblers programs. The Mayor stated in his cover letter, that "the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size". (Volume III, Tab 1).

(b) Common Council: The Common Council of the City of Hudson adopted a resolution with a stated purpose of protecting the "city's interest in the event the transfer takes place." The Council only sought to protect the City's financial interest and did not take a position on the proposal (Volume III, Tab 1, page 12).

(c) School District: The School District of Hudson provided considerable correspondence on the proposal (Volume III, Tab 4). Their primary concern was insuring that the tax revenue that would be lost after the land was placed into trust be replaced. To accomplish this, the School District passed a resolution to protect their financial interests (Volume III, Tab 4). However, the resolution did not approve or disapprove the purpose of the proposal. An agreement between the City, County and Tribes was

eventually finalized (Volume I, Tab 9). It provides for a distribution formula for services to be paid by the Tribes. The School District approved the distribution formula in an intergovernmental agreement with the County on April 12, 1994. The particular financial aspects of the agreement are discussed in Part I of this report. The School District then wrote to the Governor of the State of Wisconsin calling for in-depth investigations regarding the impact on education (Volume III, Tab 4, page 7). They expressed their desire for additional funding, earlier growth escalators and the possible need for a reversionary clause in the deed. This indicates weak support for the current proposal.

3. Consultation with the County of St. Croix:

The County Board Office of St. Croix County, Wisconsin also provided correspondence on the proposal (Volume III, Tab 2). On March 13, 1994, prior to the signing of the "Agreement for Government Services", they wrote to the Governor to advise him that significant back real estate taxes are owed on St. Croix Meadows (Volume III, Tab 2, page 8). The Board requested that the Governor not approve any agreement in relation to the proposal until the county has received payment of all real estate taxes, penalties, and interest due and unpaid on the St. Croix Meadows dog track property. They also noted strong public opposition to the proposal. However, after the signing of the agreement, the Board showed their support of the proposal by criticizing the Hudson School District in their call for in-depth investigations by the Governor (Volume III, Tab 2, page 10). No mention was made of the public opposition. This indicates that the Board fully supports the proposal.

The St. Croix County Board Office also prepared an "Impact Assessment" of the proposed gaming establishment (Volume III, Tab 2, page 1). It focused on the impact of the proposal to the County as a whole, including the City specifically. The assessment was prepared by the County Planning Department Staff and reviewed by the Chairman, Richard Peterson. Although each of the seven subject matters were addressed, Mr. Peterson stated in the cover letter that the County could not conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. We note that this assessment was completed prior to the signing of the Agreement for Government Services.

4. Consultation with the Town of Troy:

The Town of Troy provided their response to our consultation letter on March 14, 1994 (Volume III, Tab 3). The town had several areas of concern dealing with, increased traffic, lowered standard of living, limited housing, and the possible additional cost services.

The town's concern over increased traffic is addressed in the finding of No Significant Impact. The concern over a lower standard of living as an argument against the proposal is without merit since the Tribes have indicated that the proposed gaming facility will require many supervisory and managerial positions as well as training programs. Additionally, Dr. James M. Murray estimates that 85 percent of the employment and payroll in the expanded operation will accrue to Wisconsin residents and that 90 percent of the spending at the proposed gaming facility will originate from outside the state of Wisconsin (Volume I, Tab 5, page 12). The concern of limited housing does have merit. However, we find that any growth to the community as a result of gaming facility would not have a detrimental affect on Hudson. The towns concern over additional cost of services has been addressed in the Agreement for Government Services.

5. General Public Response:

(a) Public Opposition: Approximately 76 letters⁴, written by people in the Hudson community, were sent to the Department of the Interior expressing opposition to the proposal. Their arguments against approval of this proposal are based primarily on social concerns, i.e. concern over increased crime; concern over the impact of gaming on the children in the area; concern over the projected increased traffic; concern over a possible increased cost to the city; possible increased cost to the social programs that problem gamblers would cause; concern over organized crime; and general concern over the diminishment of the aesthetical values to the city. The people against this proposal also cited the referendum of April 1993, to show that a majority of people were against the expansion of gambling in Wisconsin. Many stated that the market is already saturated and that the dog track was a failure so the Casino will be too. As a result, it is only serving as a "bailout" for the current owners of the St. Croix Meadows. Many people stated that Hudson is fine economically without the casino and does not need the low paying jobs that would be created. A few people were morally opposed to the idea of gambling.

Approximately 3,100 people signed a petition expressing opposition to the proposal. We have not verified the legitimacy of the signatures. Nor have we determined how many people who signed the petition are registered voters in Hudson. It is our determination that these petitions should be directed to the Governor of the State of Wisconsin.

A thorough report was sent in by one member of the Hudson community to provide evidence to form a basis to reject the application. However, each of the issues raised in the report

⁴ These letters are attached.

have been addressed by the Tribe's application, in the Finding of No Significant Impact, by the local governments of Hudson, or in other areas of our findings. Many of the arguments advanced by people opposed to the proposal are also political in nature and raise policy issues for the Department of the Interior. It is our determination that none of these issues form a basis to reject the proposal.

(b) Public Support: One letter, written by Wisconsin State Legislature, Doni Burns, was sent expressing support for the proposal. He stated that the majority of people in Hudson were in support of this proposal. To support his position he referred to a referendum passed in 1992 in regard to the possibility of a casino at St. Croix Meadows.

The referendum voted on in 1992 asked the following question:¹

Do you support the Transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?

Results: 1,351 people voted "yes", (51.2%);
1,288 voted "no" (48.8%)

The survey results were provided by the City of Hudson and referred to in a number of the responses by people in favor as well as people opposed to the casino.

This referendum differs from the April 1993 statewide referendum in that it is site specific. The 1993 statewide referendum (Volume II, Tab 8) which has been cited by people opposed to the proposal, asked:

"Do you favor a constitutional amendment that would restrict gambling casinos in this state?"

St. Croix County results: 6,328 voted "yes" (65.4%)
3,352 voted "no" (34.6%)

While the Hudson Proposal may be an expansion of a type of gaming in Hudson, it will not be an expansion of a gaming facility. Additionally, since the Tribes have agreed to a limited number of Class III facilities with the State of Wisconsin, it will also not be an expansion of gaming in Wisconsin. It may also be argued (indeed, the Tribes have done so) that this is not an expansion of gaming even in Hudson since the building is already

¹ The question and results were obtained from the City of Hudson (Volume III, Tab 1, page 11).

in place and the dog track is currently in operation. At any rate, it is our determination that the 1993 referendum, standing alone, does not preclude the Secretary of the Interior from making a determination the Hudson proposal would not be detrimental to the surrounding community.

Approximately 800 people signed a petition supporting the Hudson proposal. They did not provide any supporting reasons. No evidence has been provided to show that these signatures are not legitimate. However, we have not verified the residency of these supporters or determined whether or not they are registered voters in the State of Wisconsin or elsewhere.

6. Consultation with Neighboring Tribes:

18 Tribes in the State of Minnesota and Wisconsin were informed of the proposal (Volume III, Tabs 5 - 16). We requested that these Tribes provide input on the impact the proposal would have on their respective reservations by letter, all dated December 30, 1993. Nine of the eleven responses that we received were emphatically against the proposed Hudson project. However, none of the Tribes that responded provided reliable or scientific data to support their views. The following are the Tribes and Tribal Organizations that responded as a result of our inquiries and a summation of their comments and our response:

(a) St. Croix Band of Chippewa Indians of Wisconsin: St. Croix is strongly opposed to the project (Volume III, Tab 12). They stated, "the proposed Hudson fee to trust acquisition will have an extreme detrimental and crippling impact on the St. Croix Casino located in Turtle Lake, Wisconsin." They supported this position by providing a detailed response to the seven questions and an Impact Statement. This material focused heavily on the probable loss of revenue at the Tribe's Turtle Lake Casino. The St. Croix Tribe stated that the Hudson proposal would cut into the revenue generated at their Turtle Lake Casino because the Hudson proposal is larger, in a better location and has a better highway system. St. Croix also stated that the gaming market is already saturated and as a result, they would have to increase marketing expenditures just to survive and would lose current qualified employees to the Hudson project. The Tribe did not provide any data to support their position.

St. Croix provided a casino density illustration to show that "the market is becoming saturated". However, they did not provide any financial studies to back up this or any other claim dealing with a loss of income.

We question St. Croix's opposition to this project since initially, they were the first Tribe to consider purchasing the St. Croix Meadows Dog Track for gaming purposes. We also find that their economic position is overstated since they have two

casinos currently in operation and may also be working to purchase the Lake Geneva Dog Track to add a casino.

(b) Wisconsin Winnebago Nation: The Wisconsin Winnebago Business Committee responded by stating that they do not want this proposal to even be considered until the State of Wisconsin has fulfilled its commitment under the Tribal/State Compact to agree to a fourth Class III gaming site for the Wisconsin Winnebago Nation (Volume III, Tab 13).

We find that the conflict over the Gaming Compact between the Wisconsin Winnebago Nation and the State of Wisconsin provides no legal basis to reject the Hudson's proposal.

(c) Leech Lake Band of Chippewa Indians: The Leech Lake Tribal Council passed a resolution against the proposal (Volume III, Tab 6). They stated that numerous problems will arise for the State and the gaming Tribes in Minnesota if gaming is expanded to off-reservation locations. According to the Tribe, the problems would not only be a monetary loss to the surrounding Tribes but also political in nature due to the unfair use of the "special trust and tax status" of the Tribes. However, they did not elaborate as to what the political ramifications would be. Nor did the Leech Lake Band provide any justification for limiting the expansion of gaming to "off-reservation" locations.

(d) Shakopee Mdewakanton Sioux Community: The Shakopee Mdewakanton Sioux Community's Business Council passed a resolution stating their opposition to the proposed Hudson Venture (Volume III, Tab 11, page 3). Their objections were based on loss of income for the surrounding gaming Tribes and the political ramifications. Specifically, the Business Council stated the proposed casino would have a "detrimental political impact in Minnesota since Minnesota Tribes have agreed by formal tribal/state compacts to not expand Tribal gaming off-reservation..."

The Community also argued that the proposed area is actually Mdewakanton Sioux territory Id. As a result, they feel that approval of an off-reservation gaming facility in Hudson should be reserved for the Mdewakanton Sioux Tribe. We have found no legal basis for this argument. Our Fee to Trust review under 25 C.F.R. Part 151 will identify any interest this Tribe may hold in the land at Hudson.

The Chairman and CEO of the Little Six, Inc., also responded on behalf of the Mdewakanton Dakota Community (Volume III, Tab ii, pages 8 - 11). He stated that the Community "vehemently opposes" the proposal for the following reasons:

- 1) This is only an off-reservation gaming experiment which could have devastating impacts on the negotiation process

among the National Indian Gaming Association, Congress, State Governors, and Attorneys General.

2) This proposal could damage the national efforts to protect gaming and could have severe political ramifications in Minnesota. They did not elaborate or provide any scientific information to support this claim.

3) The proposal could cause the State of Minnesota to open up gaming around the State thereby diminishing the beneficial economic impact of Indian Gaming. The Tribe has not provided any legal justification to show why gaming should not be expanded by Wisconsin Tribes in Wisconsin.

4) The market is at or very near the saturation point and cannot absorb another casino in the Twin Cities area without having a negative impact on jobs. A market study has not been provided by the Shakopee Mdewakanton.

5) The proposal could damage the current cooperative government to government relationship between the State of Minnesota and the Tribes. The Tribe has yet to explain how this will happen.

(e) Prairie Island Dakota Community: The Prairie Island Dakota Community passed a resolution voicing their opposition to the proposal (Volume III, Tab 10). They stated that the Hudson Casino would "saturate the already extremely competitive Minneapolis-St. Paul market area." In addition, the Tribe contends that they would not be able to compete due to the advantages the Hudson site offers. Specifically, the Tribe stated that they would suffer a severe loss of revenue (they estimate a 30%-50% reduction in customers) due to the following reasons: the proximity of Hudson to the metro area, the proximity of the proposed casino to an interstate highway and because the dog track is already an existing "first-class facility".

(f) Lower Sioux Community: The Lower Sioux Community did not pass a resolution opposing the proposal. However, the Chairman did write a letter indicating his opposition (Volume III, Tab 7). He stated that the Lower Sioux Community would be severely and unfairly damaged economically. He also indicated that the Community would be damaged politically since all of the Minnesota Tribes have not sought to locate a gaming establishment away from the reservations and to do so would cause a region-wide and probably a nation-wide race by other Tribes to do the same. No data was provided to validate his arguments.

(g) Minnesota Chippewa Tribe: The Minnesota Chippewa Tribe passed a resolution opposing the Hudson Project (Volume III, Tab 14). They stated this proposal could set a dangerous precedent by creating an open market for expansion by other Tribes.

(h) Mille Lacs Band of Chippewa Indians: Although the Mille Lacs Band did not pass a resolution to declare their opposition to the proposal, the Chief Executive did write a letter stating the Tribe's opposition and referred to letters written by the Minnesota Indian Gaming Association (Volume III, Tab 8). She also asserted that the Indian Gaming Regulatory Act was designed to act as a reservation based economic development tool and that the Hudson proposal is inconsistent with that intent. She said that reservation based gaming has allowed Mille Lacs to take a 45% unemployment rate to "effectively zero". She feels this number would increase should the proposal go through. No studies or data was provided to support these claims.

(i) Minnesota Indian Gaming Association: The Minnesota Indian Gaming Association passed a resolution and wrote a number of letters expressing their opposition to the Hudson Proposal (Volume III, Tab 15). They stated that since Minnesota Tribes oppose off-reservation gaming activity and have promised not to expand tribal gaming off-reservation, the Hudson proposal is an infringement upon their own inherent sovereign rights. In addition, the following reasons were given for their opposition:

- 1) Other gaming Tribes would suffer economically due to the Hudson proposal's close proximity to the metro area. In particular, the more remote casinos would be hurt.
- 2) The St. Croix area has historically been considered to be Dakota land. Findings: This issue will be addressed in the actual transferring of the land into trust pursuant to 25 C.F.R. Part 151. The objections identified in the Preliminary Title Opinion, if any, will have to be satisfied before the land may be transferred.
- 3) An off-reservation expansion of this magnitude would create huge political problems for Minnesota Tribes. The Minnesota Indian Gaming Association stated that State Legislators have been under political pressure from private businesses who want to expand gaming by placing video games in bars among other things. They also stated that they have fought hard to keep this from happening and the this proposal would jeopardize what they have fought to maintain.

MIGA also argues that the National Governors Association and other adversaries have been stating that tribes would expand gaming off-reservation into major cities in direct competition with non-Indian businesses. MIGA does not want them to be proven right.

(j) Lac du Flambeau Band of Lake Superior Chippewa Indians: The Lac du Flambeau Band stated that they do not oppose the Hudson project (Volume III, Tab 1). They also stated that their experience in gaming indicates that there would be a beneficial

impact.

(k) Oneida Tribe of Indians of Wisconsin: The Oneida Tribe stated that since they are located 250 miles away from Hudson, Wisconsin, they are not in a position to offer detailed comments or analysis on the impacts of the proposal (Volume III, Tab 9). They did state that they do not perceive that there would be any serious detrimental impacts on their reservation or gaming operations.

B. IMPACT ON NEARBY TRIBES:

1. Economic:

None of the Tribes who have written to our office to protest this proposal has provided us with any figures to back up their claim that the Hudson Venture would be "devastating economically" to the other casinos in the area. As a result, we must rely heavily on the study prepared by Arthur Andersen and Dr. Murphy to estimate the impact on the other Tribes economically.

Arthur Anderson's study estimates current market revenue for the six existing casinos in the Minneapolis/St. Paul area to be \$510 million with a total estimated market revenue between \$550 and \$630 million⁹ (Volume I, Tab 3, page 21).

Since the Hudson Venture's share of the market is estimated to be \$80 Million, AA has found that even though the existing casinos would suffer some economic loss, the "proposed Hudson casino should not significantly impact aggregate revenues of the existing casinos" Id. We have particular concern over the economic impact of those casinos located within 55 road miles from Hudson. They include the Mystic Lake Casino, Turtle Lake Casino and Treasure Island Casino. Each of the Tribes operating these casinos have voiced strong opposition to the Hudson Proposal based on economic reasons. However, none of these Tribes have provided our office with any hard figures to back up their claims.

On August 12, 1994, we requested the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes provide an analysis which focuses on the particular economic impact of the proposed casino on the

⁹ The market was estimated by Arthur Andersen & Co. using the following figures:

Population within 100 miles....	3,800,000
MULTIPLIED BY: Estimated per capita gaming revenue....	\$145 - \$165

We also note that the Hole in the Wall Casino in Danbury, Wisconsin, was not included in figuring the total estimated market revenue.

Mystic Lake, Turtle Lake and Treasure Island Casinos. The Tribes did not respond in writing. Their representative, Bill Cadotte, did state that there is no legal basis to reject the proposal based on what the potential political ramifications "might" be. We concur. Specifically, we find that additional market studies cannot be completed by the three Tribes without financial data supplied by the three casinos in question.

2. Political:

A number of Tribes and commentators have indicated that expansion of off-reservation gaming erodes their political power and will eventually undermine their ability to limit States from expanding gaming. However, it can be argued that each new gaming operation, whether or not on land placed into trust prior to October 17, 1988, erodes Tribal political power to protect the gaming industry. We find that the Tribal Sovereignty of the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes is far more important than limiting the expansion of Tribal Gaming. In fact, each Tribe currently operating gaming facilities went into the industry knowing that expansion into major metropolitan areas was a possibility and maybe even likely. We find that it is up to each individual Tribe to operate within the limits of the Indian Gaming Regulatory Act, their Class III Gaming Compacts and their existing governing documents. The Minneapolis Area Office will not restrict Lac Courte Oreilles's, Red Cliff's, Sokaogon's or any other Tribe from operating within these limits and find that any negative political ramifications from this proposal would be minimal.

C. EVIDENCE OF ENVIRONMENTAL IMPACTS AND PLANS FOR REDUCING ANY ADVERSE IMPACTS:

The Lac Courte Oreilles and Red Cliff Bands Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust 55.82 acres of land. The proposed trust site consists of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a Class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

1. Environmental Considerations:

An "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" was prepared by

Mid-State Associates, Inc., in accordance with the requirements of the Wisconsin Racing Board Application for License (Volume IV, Tab 4). An addendum to the Environmental Assessment was prepared by Bischof & Vasseur for the proposed trust acquisition (Volume IV, Tab 3). Based on the findings of the EA and the Addendum, the Superintendent, Great Lakes Agency, found that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary. The *Finding of No Significant Impact* was issued on September 14, 1994 (Volume IV, Tab 1).

A Level I Hazardous Waste Survey has not yet been completed. However, we do note that a Phase I Environmental Property Assessment has been prepared by Braun Intertec for the Tribes. It indicates that there are no documented or observable environmental concerns associated with asbestos containing building materials or underground storage tanks. It also states that there is no documented evidence indicating any past or current land-use activities that have had an adverse environmental impact on the site. We also note that prior to the United States taking the land into trust, a Level I Hazardous Waste Survey must be completed and approved at the Area Office. We will satisfy this requirement under the 25 C.F.R. Part 151 process.

2. Natural and Cultural Resources:

The addendum to the Environmental Assessment states that the proposed facility will have no new significant short-term, long-term, or cumulative impacts on the regional geology, including bedrock and soils, ground water/water quality, or climate (Volume IV, Tab 3).

The Addendum also states that the facility is not expected to impact any natural areas such as native trees or wildlife habitat. Additionally, there are no anticipated impacts from the planned action on wetlands or other surface waters in the area. According to the National Wetlands Inventory Map for the site, there are no designated wetland areas located on the site. No rare plant or animal species or other significant natural feature will be adversely impacted.

(a) Land Resources: The topography of St. Croix County ranges from gently rolling to hilly and rough (Volume IV, Tab 4, pages 3 & 4). All of the county has been covered by continental glaciation. The St. Croix River has also had a major impact on the topography of the area. The St. Croix River is bounded by 100' - 200' bluffs along its eastern shore. The Hudson Casino Venture would be located on the plateau above these river bluffs.

The site where the proposed facility would be located and the

immediate area surrounding the site is "mostly gently rolling with an average elevation of 840 feet" Id.

The site surrounding the facility is a combination of many soils. Pillot silt loam is the most common Id. The slope of this soil is 0 to 3 percent so runoff is slow and there is slight hazard of erosion. Most of the remaining soil at the site is Burkhardt-Sattre complex of differing slopes. Since most areas of the Burkhardt-Sattre complex are cultivated, there is no identified erosion or soil blowing problem.

Since the planned action will utilize the existing racetrack facilities, there will be no significant impact on prime or unique farmlands in the Farmland Protection Policy Act (Volume IV, Tab 3, page 3).

(b) Water Resources: The Hudson area has an abundance of groundwater. All potable water used in St. Croix County is groundwater. The supply of water is presently determined by the ability to pump it out of the ground. The source of the groundwater is precipitation (Volume IV, Tab 4, page 3).

The Hudson area surface waters occupy two major drainage systems. The St. Croix River drains the western two-thirds of St. Croix County. The balance of the county is mostly drained by the Chippewa River which flows into the Mississippi River Id.

The St. Croix River is located approximately 4800 feet to the west of the proposed facility. There are no other existing surface water bodies in the EA study area Id.

(c) Air Quality: Both the City of Hudson and St. Croix County have stated that the projected traffic increase will not cause the air quality to exceed applicable standards (Volume III, Tab 1, page 1 and Volume III, Tab 2, page 2). Air monitoring stations are currently in place at the track exit and the southeast corner of the Carmichael Interchange to detect any change in the air quality which could be harmful to the area Id.

(d) Threatened and Endangered Species: St. Croix County is listed as a habitat for the following three endangered or threatened species (Volume IV, Tab 4, page 4):

- (1) Peregrine Falcon - Potential breeding habitat; Endangered.
- (2) Bald Eagle - Breeding and wintering habitat; Threatened.
- (3) Higgins' Eye Pearly Mussel - River habitat; Endangered.

According to the EA, site visits in 1988 to the area around the proposed facility did not detect any of these species Id. The development site may serve as a habitat for the Peregrine Falcon and Bald Eagle. However, none have yet been located. Additionally, there is no habitat for the Higgins' Eye Pearly

Mussel at the site. At any rate, the natural area consisting of vegetation or wildlife habitat will not be impacted by the internal construction or additional traffic flow id.

(e) Cultural Resources: No specific cultural resources or structures are known to exist on the site.

The State Historical Society of Wisconsin has stated that there are no buildings in the study area that are listed in the National Register of Historic places (Volume IV, Tab 2, page 2).

The Mississippi Valley Archaeology Center, Inc., stated that there are no known archeological sites in the proposed project area (Volume IV, Tab 2, page 3).

D. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY:

Concern over an increase in crime has been expressed by most of those people who wrote to oppose the Hudson Venture. However, none of the letters contained any scientific or statistical evidence to back up this claim. The City of Hudson has stated that similar predictions were made in regard to the St. Croix Meadows dog track before it went into operation in 1990. The City stated, to date, "none of the earlier negative predictions concerning increased crime, etc., have come true..." (Volume III, Tab 1, page 2). To prevent any crime escalation in the City of Hudson, and to help offset any fear among the community, the City has stated that they will hire an additional Investigator Crime Prevention Office in the year the Casino is opened (Volume III, Tab 1, page 4). The City also expects the Police Department to expand the police force by five officers and one clerical employee within the next five years id. Additionally, the Tribes have stated that they are committed to paying for the reasonable costs of these services (Volume I, Tab 1, page 12).

The City stated that the residents of the community have come to accept the dog track's existence and that there is no overwhelming majority of citizens either in favor of or opposed to the casino (Volume III, Tab 1, page 2). Nevertheless, the city is prepared to handle any negative reaction by the community over the casino.

E. IMPACT ON THE INFRASTRUCTURE:

1. Utilities:

The current facility is supplied by existing public water, sanitary sewer, electric, and telephone utilities. No additional infrastructure is scheduled to be constructed as part of the proposed action.

2. Zoning:

According to the City of Hudson, most of the proposed trust site is zoned general commercial district (B-2) for the principal structure and ancillary track, kennel and parking facilities (Volume III, Tab 1, page 4). Six acres of the proposed trust site are currently zoned single family residence Id. The east, south and westerly perimeters are classified as on-family residential districts (R-1) and serve as a buffer area between the track operation and other surrounding land uses Id.

3. Water:

The City of Hudson stated that the water trunk mains and storage facilities are adequate for providing water service to the proposed casino and ancillary development south of I-94* (Volume III, Tab 1, page 3).

4. Sewer and Storm Drainage:

According to the Impact Assessment of the Proposed Casino on St. Croix County which was prepared by the County, St. Croix County anticipates an increase in waste generation from the proposed casino (Volume III, Tab 2, page 1). Currently, the St. Croix Meadows generates .5 pounds per person Id. This equals approximately 104 tons of waste per year. Based on the anticipated average daily attendance of 7,000 people, the proposed casino would result in a production of 639 tons of waste per year, an increase of 535 tons. The County has stated that the waste-to-energy facility that services St. Croix County has adequate capacity to handle the increase Id. To verify the figures, the County compared their estimates to the St. Croix Bingo and Casino gaming facility in Turtle Lake, Wisconsin. That facility averages .53 pounds per person or 677 tons per years.

An existing storm water collection system collects storm water runoff and directs it towards a retention pond located near the southwest corner of the parking area. From there, collected storm water is allowed to evaporate, percolate into site sils, or slowly flow along a regional storm water control system towards the St. Croix River (Volume IV, Tab 4, pages 7 & 8). According to Hudson officials, the existing storm water control system is adequate to handle storm water runoff from the site (Volume III, Tab 1, page 3).

5. Lighting:

The County has stated that although the City of Hudson has jurisdiction to control and monitor the lighting, the County has a responsibility to surrounding neighbors in other jurisdictions (Volume III, Tab 2, page 2). As a result, the County expressed that any changes made to the current lighting system take into

consideration the larger community which may be affected. They did not express any dissatisfaction with the current system.

The City of Hudson stated that this concern was addressed at the time St. Croix Meadows was constructed. Specifically, a lighting system is already in place which reduces the light spillage at the property lines "to an amount equivalent to residential streets" (Volume III, Tab 1, pages 1 & 2). The City also acknowledged that the lights may be on for extended periods of time because the casino operation is likely to be open until 2:00 a.m. or 24 hours per day Id.

6. Roads:

(a) Access: The City of Hudson stated that the current street system is sufficient enough to accommodate projected traffic needs based on 40,000 average daily trips (Volume III, Tab 1, page 4). However, development on Carmichael Road north of the proposed casino may be necessary. Specifically, traffic regulatory signals will likely be needed at the interchange of Carmichael Road and Hanley Road.

St. Croix County expressed particular concern with increases in traffic on USH 12, CTH UU, CTH A, and Carmichael Road (Volume III, Tab 2, pages 2 & 3). The County stated that even minimal traffic increases will have a negative impact on these roadways since they are already at capacity. However, information gathered from the Wisconsin Department of Transportation indicates that any negative impact from additional traffic will be minimal (Volume IV, Tab 3, pages 38 & 39).

(b) Traffic Impact Analysis: A traffic study was completed and is contained in the 1988 Environmental Assessment for the St. Croix Meadows dog track (Volume IV, Tab 2, page 18). It is based on traffic projections in the year 2011. Peak traffic estimates were provided to the Wisconsin Department of Transportation regarding the proposed Hudson Casino Venture. No significant problems were identified regarding the proposed traffic increase on the Interstate 94/Carmichael Road Interchange.

The *Finding of No Significant Impact* (Volume IV, Tab 1) also indicates that although no transportation system is likely to be developed in Hudson that would assure there will be no slow-down or delays during peak traffic periods, various methods would be utilized to manage delays should they occur. These methods include varying dog track racing times so as not to coincide with peak casino attendance times, elimination of parking fees and gates for easy parking lot entry, use of shuttle buses and remote parking areas, possible adjustment of time delays on traffic lights during peak attendance times, and installation of traffic lights.

F. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY:

The City has stated that approximately 25 acres of the site is developed. The six acres that are zoned as single family residence have limited development potential; 18.5 acres are located in an area of the bluff east of the track and are generally not suited for development, although there may be some potential; 5.5 acres are suitable for development (Volume III, Tab 1, page 4).

The City of Hudson has stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses Id.

G. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY:

Total employment at the proposed facility is expected to be between 1,500 and 1,600 positions. Current employment figures at St. Croix meadows is approximately 175 full-time positions and 225 part-time positions (Volume III, Tab 2, page 4). All existing employees would be offered re-employment at their current wage rates. Thus, between 1,100 and 1,200 new positions are expected to be generated Id.

Even though the three Tribes will give hiring preference to their own tribal members, 80-90% of the new positions are expected to be filled by non-Tribal members already living in the Hudson area Id. Wage rates for these jobs are estimated at between \$5 and \$10 per hour, not including salaried positions Id.

According to statistics provided by the St. Croix County, the service industry accounts for 20 percent of the County's 1993 total labor force of 28,300 people. Since the casino is expected to pull some employment from existing service jobs within the county, County officials estimate that approximately 175 service positions will be filled by currently unemployed County residents either through direct employment at the casino or by other service jobs Id.

The remaining 900-1025 positions are expected to be filled by people from the nearby Wisconsin counties.

According the Economic Impact Report by Dr. James Murray, over 90 percent of the spending at the proposed Hudson Gaming Facility is expected to originate from outside the state (Volume I, Tab 5, page 5-2). Dr. Murray estimates the total impact of the gaming facility would be to support 2,691 jobs and generate over \$56 million in annual earnings for residents of Wisconsin (Volume I, Tab 5, page 12).

E. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO:

Additional services will be needed in the City of Hudson, County of St. Croix and at the site of the Hudson Project. To assure that all necessary services are provided, the three Tribes, County of St. Croix and the City of Hudson have entered into an Agreement for Government Services (Volume I, Tab 9). In the agreement, the Tribes, through their EDC's, will pay the City and County for general government services, including, but not limited to, the following services: police, fire, water, sewer, ambulance, rescue, emergency medical and education. These services will be provided in the same manner and at the same level of the services provided to residents of the City and County and other commercial entities located in the city and county. The agreement will continue for as long as the land is held in trust or until Class III gaming is no longer operated on the land.

I. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING:

Currently, there is not a compulsive gamblers program within St. Croix County. The County has indicated that if the Hudson Project goes into operation, their Human Services Department would initiate staff training and would develop treatment programs, including initial on-site screening of potential problem gamblers, treatment and aftercare services (Volume III, Tab 2, page 5).

There are six State-Funded Compulsive Gambling Treatment Centers in Minnesota (Volume II, Tab 7, page 38). Two are in Minneapolis. The other four are located in St. Cloud, Bemidji, Granite Falls and Duluth. According to the Minnesota Council on Compulsive Gambling, since 1984, limited funds have been appropriated by the Minnesota Legislature for training, research, gamblers' hot-line services, rehabilitation and public awareness programs (Volume II, Tab 6, page 2). Unfortunately, Minnesota Planning has also found that current levels of treatment in Minnesota are inadequate and that some treatment facilities already have waiting lists while others are near capacity (Volume II, Tab 7, page 37).

Since there are no Wisconsin state-funded treatment facilities near Hudson, the three Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. Additionally, the Tribes have stated they will contribute money to local self help programs for compulsive gamblers (Volume I, Tab 1, page 12).

III. RECOMMENDATIONS

Based upon the discussion and conclusions provided above, we recommend that the Secretary of the Interior find that the proposed action will be in the best interest of the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes and that it will not have a detrimental effect on the surrounding community. We also recommend that the decision be made to take this particular parcel into trust for the three Tribes for gaming purpose.

I attest that I have reviewed this transaction and the case file is documented in compliance with all of the above stated regulations and facts. I further state that I will not accept the property in trust until I have received satisfactory title evidence in accordance with 25 C.F.R. Part 151.12.

ATTEST:

[Signature]
Area Director

11-17-74
Date



IN REPLY, REFER TO

Tribal Operations

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
 Minneapolis Area Office
 231 South 2nd Avenue
 Minneapolis, Minnesota 55401-2341

April 20, 1995

Memorandum

To: Assistant Secretary - Indian Affairs

From: Office of the Area Director

Subject: Trust Acquisition Request - St. Croix Meadows Dogtrack Property

Attached is a request by the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the Tribes) to place 55.82 acres of land into trust status for the benefit of all three tribes. The property consists of the St. Croix Meadows Greyhound Racing Facility and is located in Hudson, Wisconsin. In addition to the land, the Tribes have also entered into an agreement to purchase the assets of the track from the current owners. Once the requirements of the Indian Gaming Regulatory Act of 1988 are satisfied, the agreements to purchase the assets of the dogtrack are executed, and the land is placed into trust, the Tribes will add casino type gaming to the facility.

The Tribes are currently awaiting satisfaction of the requirements of the Indian Gaming Regulatory Act of 1988 before executing the land and asset purchase agreements. We transmitted our Section 20 Recommended Findings of Fact and Conclusions for this project to you on November 15, 1994. Since that time, the Tribes have specifically requested that the Bureau of Indian Affairs begin the process of placing the land into trust status. As a result, we obtained the attached Preliminary Title Opinion from the Office of the Field Solicitor, Twin Cities. We have also attached the following material in support of the trust acquisition:

- 1) Title Insurance Commitment;
- 2) Level I Hazardous Waste Survey;
- 3) Finding of No Significant Impact;



- 4) Maps of the property;
- 5) Tribal Resolutions requesting the land be placed into trust;
- 6) Notification letters addressed to the local units of state government.

Please note, the responses of the local units of state government and additional material were included in our November 15, 1994 transmittal.

We have completed our review and analysis of the request and the supporting documentation. The findings and recommendations to place the land into trust after satisfaction of all IGRA requirements are set forth in this memorandum for your approval or disapproval.

1. PROPERTY TO BE ACQUIRED

The property to be acquired is located at 2200 Carmichael Road in Hudson, Wisconsin, approximately one mile south of the Carmichael Road/Interstate "94" interchange. The site consists of approximately 55.82 acres located in the fractional Northeast Quarter of the Northeast Quarter and Southeast Quarter of the Northeast Quarter, Section 6, Township 28 North, Range 19 West, City of Hudson, Saint Croix County, Wisconsin, described as follows:

The fractional Northeast Quarter of the Northeast Quarter of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional Northeast Quarter of the Northeast Quarter of said Section 6.

Also, that part of the Southeast Quarter of the Northeast Quarter of said Section 6 described as follows: Commencing at the Northeast corner of said Section 6; thence S02°49'01"W, 1,891.74 feet along the East line of the fractional Northeast Quarter of said Section 6 to the Northeast corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the Southeast Quarter of the Northeast Quarter of said Section 6; thence N02°48'30"E along the West line of said Southeast Quarter of the Northeast Quarter to the Northwest corner thereof; thence Easterly along the North line of said Southeast Quarter of the Northeast Quarter to the Northeast corner thereof; thence S02°49'01"W, along the East line of said Southeast Quarter of the Northeast Quarter to the point of beginning.

In June, 1991, the St. Croix Meadows Greyhound Racing Park opened on the site. The facility consists of a racing area, enclosed grandstand and clubhouse, kennels,

and parking areas. The racetrack is open year round and has twenty kennels, each kennel having the capacity of housing up to 72 greyhounds each. The racetrack currently employs approximately 282 employees, including the food service employees. Prior to the construction of the racetrack, the site was used for agricultural purposes.

II. COMPLIANCE WITH LAND ACQUISITION REGULATIONS

25 C.F.R. § 151.10 identifies various factors which must be considered in all fee-to-trust acquisitions. Each factor for the placement of the St. Croix Meadows Property in trust for the three Tribes is discussed below:

- A. 25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority:

The Sokaogon Chippewa, Lac Courte Oreilles Chippewa and the Red Cliff Chippewa are all organized under the Indian Reorganization Act of 1934. Each tribe has requested to place the land in Hudson, Wisconsin, in trust for the benefit of all three Tribes under 25 U.S.C. § 465. The Bureau of Indian Affairs is authorized to process this application under 25 C.F.R. 151.3(a)(3) which states that land not held in trust may be acquired for a tribe in trust status when such acquisition is authorized by an act of Congress, and when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

- B. 25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land:

The trust acreage at the three tribal reservations totals 57,868.76 acres.¹ However, each of the Tribes lack an adequate land base to provide facilities for economic development. This is due to the fact that each of the three reservations is located in areas of Wisconsin which are remote from significant population centers.

The Tribes operate a total of five (5) gaming facilities within the exterior boundaries of the three reservations. To ensure the continuing stream of revenue necessary for tribal economic development, self-sufficiency and a strong tribal government, the Tribes must expand its gaming operations beyond the existing facilities. The

¹ The trust acreage is broken down as follows:
 Sokaogon Chippewa Community - 1,694.10 Acres
 Red Cliff Tribe - 7,881.12 Acres
 Lac Courte Oreilles Tribe - 48,293.54 Acres

purchase and placement into trust of St. Croix Meadows Greyhound Park is viewed by the Tribes as critical to their long-term economic benefit. The project would permit the tribal governments, as well as tribal members, to participate in the operation of a gaming facility in a large metropolitan market.

Only the Sokaogon Tribe distributes gaming revenue to tribal members in the form of per capita payments. As a result, the majority of net revenues generated by the proposed casino would be used to expand tribal social programs, tribal government operations and economic development activities well beyond the limits allowed by existing federal and state assistance.

C. 25 C.F.R. § 151.10(c) - The purpose for which the land will be used:

The Tribes intend to use the property for a Class III gaming facility. The Tribes have entered into an agreement with the current owners of the St. Croix Meadows Greyhound Park in Hudson, Wisconsin, to purchase the assets of the dogtrack. This track is located on the proposed 55.82 acres of trust land. Once the requirements of the Indian Gaming Regulatory Act of 1988 have been satisfied, and the land is placed into trust for the Tribes, casino type gaming will be added to the existing facility. No other use of the land is foreseen.

D. 25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls:

Notices of the proposed fee-to-trust conversion were sent to the Mayor of the City of Hudson, the Chairman of the City of Hudson, the Chairman of the St. Croix County Board of Supervisors, and the Chairman of the Town of Troy. The concerns not related to the removal of the property from the tax rolls that were raised by these local units of state government were fully addressed as part of the process under Section 20(b)(1)(A) of the Indian Gaming Regulatory Act of 1988 in the Recommended Findings of Fact and Conclusions prepared by the Minneapolis Area Director and sent to the Assistant Secretary-Indian Affairs on November 15, 1994.

Over 90 percent of the spending at the proposed Hudson gaming facility is expected to originate from outside the State of Wisconsin. The Hudson gaming facility is also expected to support 2,691 jobs and generate over \$56 million in annual earnings for residents of Wisconsin. Additionally, the Tribes, City of Hudson, and the County of St. Croix have entered into an *Agreement for Government Services*. Under this agreement the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other

services that are under the control of the city or county or are customarily provided to other commercial properties within the city or county.

Under the *Agreement for Government Services*, the Tribes will pay the city and county \$1,150,000 annually through 1998 to compensate for the services provided. Beginning in 1999, and for each year thereafter, the Tribes will increase the last annual payment by five (5) percent. Thus, the local units of state government should not be detrimentally impacted due to the removal of the land from its tax rolls.

E. 25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise:

1. Potential land use conflicts: According to the City of Hudson, the proposed trust site is zoned general commercial district for the principal structure and ancillary track, kennel and parking facilities. Six acres of the proposed trust site are currently zoned single family residence. The east, south and westerly perimeters are classified as on-family residential districts and serve as a buffer area between the track operation and other surrounding land uses.

The City of Hudson has also stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses. We conclude that there are no land use conflicts that would result from the acquisition of this land into trust status and its development as a gaming facility. In fact, the current plans do not require construction of any buildings for the addition of casino type gaming to the dogtrack facility. The remodeling of the existing building which already contains pari-mutuel dog racing is the only construction that will be necessary. As a result, no zoning conflicts are foreseen.

2. Jurisdictional issues: As trust land, the property would be considered "Indian Country" for jurisdictional purposes within the meaning of 18 U.S.C. § 1151. As a result, the United States would gain additional law enforcement jurisdiction in connection with the property. However, the local units of state government would have the primary law enforcement roll since the State of Wisconsin is a mandatory Public Law 280 State. The Tribes have agreed to pay for these services even though it is not required. Accordingly, jurisdictional conflicts should not present a significant obstacle to the proposed trust land acquisition.

F. 25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status:

The addition of this parcel of land to the jurisdiction of the Great Lakes Agency and Minneapolis Area Office will not result in a significant increase in workload because the Tribes will be managing the property as its own enterprise. Both the Agency and Area Office are currently sufficiently staffed so that any additional workload may be handled without the need for extra manpower or equipment.

III. NATIONAL ENVIRONMENTAL POLICY ACT

The transaction package has met compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C § 4321 *et seq.* The documentation in support of the acquisition includes a Finding of No Significant Impact (FONSI) signed by the Superintendent, Great Lakes Agency, on September 14, 1994. The FONSI is based upon an Environmental Assessment (EA) prepared by Mid-States Association, Inc. in 1988 for the St. Croix Meadows Greyhound Racing Facility and an Environmental Assessment Addendum to the EA prepared by Bischof & Vasseur in 1994. The addendum evaluates the potential impacts resulting from the proposed transfer of the site to be held in trust by the United States on behalf of the three Tribes and the remodeling of the existing Kennel Club Area to accommodate the addition of casino type gaming. The EA and addendum were reviewed by the Environmental Services Staff of the Minneapolis Area Office which found it to be adequate in scope and that its content supports the conclusions drawn.

A Notice of Availability for the addendum, Environmental Assessment and draft FONSI was published once in the *Hudson Star - Observer*, a weekly newspaper printed in Hudson, Wisconsin, on June 23, 1994.

IV. HAZARDOUS SUBSTANCES DETERMINATION

The hazardous survey form, *Level I Survey: Contaminant Survey Checklist of Proposed Real Estate Acquisitions*, was completed and certified by the Area Office Hazardous Waste Coordinator on November 18, 1994. The completion of the form indicates compliance with the required survey for hazardous substance on property to be acquired in trust and concludes that no contaminants are present on the property. The survey was also approved by the Minneapolis Area Director on November 18, 1994.

V. OTHER CONSULTATION REQUIREMENTS

In addition to compliance with NEPA, the documentation provided as a result of the proposed construction of the dog track facility in 1988, supports a finding of compliance with other related requirements as indicated by the following correspondence:

archaeological sites: The Mississippi Valley Archaeology Center, Inc. stated that after archival review of available information at the University of Wisconsin - La Crosse and the State Historical Society of Wisconsin, there are no known archaeological sites in the proposed project area.

historic preservation: The State Historical Society of Wisconsin stated that there are no buildings in the study area that are listed in the National Register of Historic places.

endangered species: The Fish and Wildlife Service, Green Bay Field Office, Green Bay Wisconsin, provided a response dated January 9, 1989, concluding that no threatened or endangered species would be affected by the construction of the dog track facility.

other: The Addendum to the EA states that there are no anticipated impacts from the planned action on wetlands or surface water in the area. According to the National Wetlands Inventory map for the site, there are no designated wetland areas located on the site.

By letter dated January 3, 1989, the State of Wisconsin Department of Agriculture, Trade & Consumer Protection stated that there was no need for an agriculture Impact Statement as a result of the initial construction of the dogtrack. Additionally, since the planned action will utilize the existing racetrack facilities, it will not have a significant impact on prime or unique farmlands as described in the Farmland Protection Policy Act.

VI. RECOMMENDATION

It is our recommendation that after the requirements of the Indian Gaming Regulatory Act have been met, authorization should be provided to place the land into trust status for the benefit of the Tribes.


Arta Director

cc: Superintendent, Great Lakes Agency
Chairman, Lac Courte Oreilles Band
Chairman, Sokaogon Community
Chairperson, Red Cliff Band
✓ Bill Cadotte, Executive Mgr. Services

Author: George Skibine at -ICSI:AE
Date: 7/8/95 5:36 PM
Priority: Normal
Receipt Requested
TO: Miltona R. Wilkins
TO: Tom Hartman
TO: Paula L. Hart
TO: Tina LaRocque
Subject: Hudson Dog Track

----- Message Contents -----

I have left on Tona's desk the redrafted version of the Hudson letter, per Duffy and Heather's instructions, along with the disk I used. Please make sure it is put in final form, and brought up to Heather first thing on Monday. Please have copies made for Bob Anderson, Kevin, ~~Troy~~, and Hilda. The Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes Area. Also, give Larry a copy of this message, and tell him to contact Tom Sweeney and keep him advised of any development on Hudson letter. I do not have a copy of the original Hudson letter draft, because it is no longer on my disk (George Skibine Docs). However, I cc: mailed that document to some of you and to SOL if it needs to be retrieved.



w 665

[196] From: George Skibine at -IOSTAE 6/28/95 6:27PM (9817 bytes; 1 ln, 1 file)
 To: TROY WOODWARD at -DOI/SOL_HQ, KEVIN MEISNER at -DOI/SOL_HQ, Hilda Manuel at
 -IBIA, Paula L. Hart, Tom Hartman

Receipt Requested

Subject: Hudson decision letter

Unknown recipient: V. Heather Sibbison at -IOS

----- Message Contents -----

Text item 1: Text_1

Please find attached a draft of the Hudson decision letter refusing to take land into trust pursuant to the discretionary authority of the Secretary and 25 CFR Part 151. IGMS is also drafting a proposed memorandum to the Commissioner concluding that the acquisition is not detrimental to the surrounding community under Section 20. That draft will be ready before the end of the week. These two drafts represent the alternatives available to the Secretary, as discussed at previous meetings. As you recall, we advised the three tribes that IGMS review under section 20 would be completed by the end of the month. Please remember that I will be on leave next week, and on travel for 638 the week after that. Let me know what you think, and whether we need to meet to finalize our position on this issue by week's end. Thank you.....GTS

Document provided pursuant
to Congressional subpoena



File item 2: hudson.txt 6/28/95 6:18P

Document provided pursuant
to Confidentiality Order

Rose M. Gurnoe, Tribal Chairperson
 Red Cliff Band of Lake Superior Chippewas
 P.O. Box 529
 Bayfield, Wisconsin 54814

Gaiashkibos, Tribal Chairperson
 Lac Courte Oreilles Band of
 Lake Superior Chippewa Indians
 Route 2, Box 2700
 Hayward, Wisconsin 54843

Arlyn Ackley, Sr., Tribal Chairman
 Sokaegon Chippewa Community
 Route 1, Box 625
 Crandon, Wisconsin 54520

Dear Ms Gurnoe and Messrs. Gaiashkibos and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaegon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55 acres parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes.

For the following reasons, the Secretary has determined not to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. 465, to acquire title to this 55 acres parcel of land in trust for the Tribes.

Land not held in trust or restricted status may only be acquired for an Indian tribe in trust status when such acquisition is authorized by an act of Congress. Authority to acquire the parcel in question is found in Section 5 of the IRA, which, in pertinent part, provides as follows:

The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations,

including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land to Indians.

Title to any lands or rights acquired pursuant to [this section] shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

The statute states that the decision to acquire land is one within the Secretary's discretion. 25 CFR Section 151.10 sets forth factors to be considered when the Secretary is acting on a request for acquisition of land in trust status, although the regulation does not purport to constrain the Secretary's discretion to consider other factors, nor to assign different weight to each factor.

One of the factors listed is the purpose for which the land will be used. The purpose of the acquisition is to enhance class III gaming at the facility with the introduction of slot machines and blackjack along with the pari-mutuel dog racing currently being conducted on the site by the owners of St. Croix Meadows Greyhound Park, Croixland Properties. For the following reasons, We are not prepared to take this off-reservation parcel into trust for gaming purposes at this time.

The parcel of land is located off-reservation, in Hudson, Wisconsin. The record before us indicates that the surrounding communities have strongly objected to this proposed trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to the proposed trust acquisition for gaming purposes. The communities' objections are based on a variety of factors, including the following: 1) Increased law enforcement expenses due to potential exponential growth in crime and traffic congestion; 2) testing waste water treatment facilities up to remaining operating capacity; 3) problems with solid waste; 4) adverse effect on the communities' future residential, industrial and commercial development plans; and 5) difficulties for current Hudson businesses to find and retain employees.

The record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin and the Shakopee Mdewakanton Sioux Community, as well as by a substantial number of other Indian tribes both in Wisconsin and in the neighboring State of Minnesota. Their opposition is centered on the potential harmful effect of this acquisition on their gaming establishments.

In addition, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District, and the U.S. Representative in whose district St. Croix Meadows Greyhound Track is located have expressed strong opposition to the proposed acquisition.

Finally, we have received numerous complaints from individuals because of the proximity of the proposed class III gaming establishment to the St. Croix National Scenic Riverway, and the potential harmful impact of a casino located one-half mile from the Riverway.

For these reasons, the Secretary has determined not to exercise his discretionary authority to acquire this off-reservation parcel of land in trust for the Tribes for gaming purposes.

As you know, Section 20 of the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. In this particular case, because we have determined not to exercise our discretionary authority to acquire this parcel of land pursuant to Section 5 of the IRA and regulations in 25 CFR Part 151, we need not undertake the two-part determination of Section 20 of IGRA, an additional requirement imposed on the Secretary before gaming can occur on Indian lands acquired after the date of enactment of IGRA. This decision is final for the Department.

Sincerely,

Ada E. Deer
Assistant Secretary - Indian Affairs

[OR, IF FOR DEPUTY COMMISSIONER'S SIGNATURE, INCLUDE STATEMENT THAT THE DECISION MAY BE APPEALED TO THE INTERIOR BOARD OF INDIAN APPEALS.]

cc: Area Director, Minneapolis Area Office

[The deposition of Patrick Emmitt O'Donnell follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: PATRICK EMMITT O'DONNELL

TUESDAY, DECEMBER 9, 1997

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 10:15 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Robert J. Dold, Jr., Investigative Counsel; E. Edward Eynon, Investigative Counsel; and Michael J. Yeager, Minority Counsel.

For MR. O'DONNELL:

ROBERT M. ADLER, ESQ.
O'Connor & Hannan, L.L.P.
Suite 800
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-3483

Mr. DOLD. Good morning, Mr. O'Donnell. On behalf of the members of the Committee on Government Reform and Oversight, I appreciate and thank you for appearing here today. The person transcribing this deposition is a House reporter and a notary public, and I am now request that the reporter place you under oath.

THEREUPON, PATRICK EMMITT O'DONNELL, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. DOLD. I would like to note for the record those who are presented at the beginning of this deposition. My name is Bob Dold, the designated Majority counsel for the committee. I am accompanied by Ted Eynon, also with the majority staff. Mike Yeager is the designated Minority counsel for the committee; and Mr. O'Donnell is accompanied today by Mr. Bob Adler.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath your testimony here today has the same force and effect as if you were testifying before the committee or in a court of law.

If I ask you about conversations you have had in the past and you are unable to recall the exact words you used in the conversation, you may state that you are unable to recall the exact words and then may give me the gist or substance of any such conversation to the best of your recollection.

If you recall any part of a conversation or any part of an event, please give me your best recollection of those events or parts of conversation that you recall. If I ask you whether you have any information on a particular subject and you have overheard other persons conversing with each other regarding it or seen correspondence or documentation regarding it, please tell me that you do have such information and indicate the source, either of conversation or document or otherwise, from which you derived such knowledge.

The Majority and Minority counsel will ask you questions regarding the subject matter of the investigation. Minority counsel will ask questions after the Majority counsel is finished. After Minority counsel has completed questioning, a new round of questioning may begin. Members of Congress who wish to ask questions will be afforded an immediate opportunity to ask their questions. I don't anticipate Members coming in today, but if they do come in, they will be afforded an immediate opportunity, and when they are finished, committee counsel will resume their questioning.

Pursuant to committee rules, you are allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the deposition shall be stated for the record.

If the witness is instructed not to answer a question or otherwise refuses to answer a question, Majority and Minority counsel will confer to determine whether an objection is proper. If the Majority and Minority counsel agree that the question is proper, the witness will be asked to answer the question. If an objection is not with-

drawn, the Chairman or Member designated by the Chairman may decide whether the objection is proper.

This deposition is considered as taken in executive session of the committee which means that it may not be made public without the consent of the committee pursuant to clause 2(k)7 of House Rule XI.

Finally, no later than 5 days after your testimony is transcribed and you have been notified that your transcript is available, and that is usually in about a day or two, you may submit suggested changes to the Chairman. The transcript will be available for review at the committee office.

The committee staff may make any typographical or clerical changes requested by you. However any substantive changes, modifications or clarifications, or amendments to the deposition transcript submitted by you must be accompanied by a letter requesting the changes and a statement for the reasons for each proposed change. A letter requesting substantive changes must be signed by you and shall be included as an appendix to the transcript, conditioned upon your signing of the transcript.

Mr. O'Donnell, do you understand everything we have gone over thus far?

The WITNESS. Yes.

Mr. DOLD. Do you have any questions before we begin?

The WITNESS. No.

Mr. DOLD. A couple of ground rules. If you don't understand a question, please say so and I will repeat it or rephrase it so you understand the question. The reporter will be taking down everything we say and will be making a written record of the deposition. You must give verbal and audible answers because the reporter cannot record what a nod of the head or gesture means. If you can't hear me, please say so and I will repeat the question or have the court reporter read the question back to you.

Do you understand that?

The WITNESS. Yes.

Mr. DOLD. Please wait until I finish each question before answering, and I will wait until you finish your answer before I ask the next question.

Your testimony is being taken under oath as if we were in a court of law, and if you answer a question, it will be assumed that you understood the question and the answer was intended to be responsive to it.

Do you understand that?

The WITNESS. Yes, sir.

Mr. DOLD. I understand you are here voluntarily today and not as a result of a subpoena; is that correct?

The WITNESS. Correct.

Mr. DOLD. Do you have any other questions before we begin?

Mr. ADLER. No.

Mr. DOLD. Now would be an appropriate time, if you have any opening statement.

Mr. ADLER. We have none.

Mr. DOLD. Mr. Yeager?

Mr. YEAGER. I have some brief remarks. As I have noted in previous depositions, the Minority objects to this deposition and all depositions related to the Hudson Casino matter. The Hudson Casino matter is shorthand for the Interior Department's denial of an application by three Indian tribes to place land into trust for development of a casino in Hudson, Wisconsin.

The Senate Governmental Affairs Committee has already completed an investigation into this matter and has called all witnesses or has called all witnesses central to any allegations of impropriety, including Secretary of Interior Bruce Babbitt, former Deputy Chief of Staff Harold Ickes, and former DNC Chairman Donald Fowler.

In addition, the Attorney General has reviewed this matter, and I understand the House Committee on Resources is conducting a separate inquiry into these issues. It seems entirely duplicative and unnecessary and a waste of taxpayer resources. It is not that the committee lacks the power to look into these issues, but simply an imprudent and oppressive use of that power.

I just wish to make our objections known for the record.

Mr. DOLD. All right.

EXAMINATION BY MR. DOLD:

Question. Mr. O'Donnell, will you please give us your full name and spell it?

Answer. Patrick Emmitt O'Donnell, O'D-O-N-N-E-L-L.

Question. Can you give us a brief history of your educational background?

Answer. I attended Georgetown University and the Washington College of Law, graduated in 1962 from law school, and have been in the practice of law ever since then.

Question. Can you please give us a brief employment history as to where you were practicing law or what jobs you have held since 1962?

Answer. I was a prosecutor for the Office of the Corporation Counsel, which is the District of Columbia's legal arm, for about 7 years, from '62. I went to the FCC as Legal Assistant to the Chairman, then Dean Burch, in about 1969, right after the Reagan election. I served there for a year or so.

I went over to the White House at that point, in 1970, and was there until Gerry Ford was defeated in 1976. I worked in the Office of Legislative Affairs at that time and represented the President on the Hill.

I had two brief stops in the interim—no, after I left. And I went to General Electric as a Legislative Counsel for about 2 years, and then to the J. C. Penney Company for about a year and a half as their Washington Vice President; and to the Reagan for President Campaign in 1980.

And then after that transition, the committee finished its work, I went to O'Connor & Hannan in January of '81 and have been there ever since as a partner in the firm.

Question. Have you discussed this deposition with anyone besides your counsel?

Mr. ADLER. Or in the presence of counsel?

EXAMINATION BY MR. DOLD:

Question. Or in the presence of counsel?

Answer. Yes.

Question. Who have you discussed this with?

Answer. Tom Corcoran, my partner, who you are going to depose tomorrow—and who else—David Melincoff, who is a partner in the firm. That is about it, really.

Question. And what did you discuss with them?

Answer. Just the fact that the deposition was taking place, where we were on it, who struck John. We have some litigation that has been filed against us, Tom Corcoran and myself personally.

Question. So you shall be personally named in some litigation?

Answer. Yes.

Question. Just for the record, we are not concerned about any of the litigation going on in Wisconsin and want to make that clear for the record that we are not interested in getting into the details or intricacies of any of the litigation going on.

Mr. ADLER. For the record, the case he is referring to is a District of Columbia filed case. There is a defamation action against Mr. Corcoran and Mr. O'Donnell, involving the Delaware North issue, as it has come to be known. There is also separate Wisconsin litigation. I think there are two cases out there that Mr. O'Donnell and Mr. Corcoran and the law firm are not parties to in that litigation.

Mr. YEAGER. If I might, I take counsel at his word that he is not interested in the Wisconsin litigation and presumably not interested in the District of Columbia litigation also. To the extent that questions bear on Delaware North or any facts surrounding the meeting with Senator McCain, I am going to ask that counsel explain the pertinency of the inquiry to the stated purpose of this investigation.

Mr. DOLD. We are looking to talk about certainly a meeting on the Hill with McCain—we will get into that a little later—and some of the areas around Delaware North, and we will get to that also later. But we will not try to jeopardize anything with regard to the litigation that you are presently in.

Mr. ADLER. Let me wait until the question comes up so you can be thinking about it. I am concerned and we are concerned about the extent of your authority. I understand full well that it deals with fund-raising issues, possible improprieties, possible violations of law involving fund-raising.

At that point, I am going to ask you for a proffer on the record as to what Delaware North has to do with the fund-raising issues, because I am not quite certain at this moment in time of how there is a possible connection. But I don't want to anticipate your line of inquiry. But when we get there, so you can be thinking about it, would, when we start to get to the first Delaware North question—I say that because I hear you saying you do want to get into that—if you would, if I don't ask you for a proffer, give me a proffer on it.

EXAMINATION BY MR. DOLD:

Question. Mr. O'Donnell, have you given any documents regarding the Hudson Dog Track, and when I say the Hudson Dog Track, I am talking about the fee-to-

trust application in Hudson, Wisconsin, filed by three tribes; I believe they are the Red Cliff, the Lac Courte Oreilles, and the Sokaogon Tribes.

Just so there is no ambiguity, when I refer to the Hudson Dog Track application, that is what I am referring to. Have you given any documents regarding the Hudson Dog Track to the Department of Justice Task Force on Fund-raising?

Answer. I am not certain. I know we have given documents to your committee. Have we given them to Justice?

Mr. ADLER. Not that I am aware of. I don't think we have even received a request for documents.

The WITNESS. I don't think we have.

Mr. ADLER. From Justice.

EXAMINATION BY MR. DOLD:

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. No.

Question. Mr. O'Donnell, when did you first become aware that there was a possibility that the Hudson Dog Track might be used for other gaming purposes, other than a Greyhound racing track?

Answer. Repeat that question; I am sorry.

Question. I guess the basic question is when did you first become aware about the Hudson Dog Track and the application process?

Answer. I was approached by my partner, Tom Corcoran—I think it was in June of '95—asking me to set up a meeting with Senator McCain having to do with this issue. Up to that point I had never heard of the issue at all.

Question. And that you say was in June of '95?

Answer. Yes.

Question. And what did you do as far as your professional involvement at O'Connor & Hannan with this issue?

Answer. I set up the meeting with Senator McCain. We had it a few days after Tom Corcoran had briefed me on the nuts and bolts of what the case was about, and we went in and saw him on a date that is in the record; I don't recall the date, it was about 5 days after my first awareness of the issue.

Question. And what, as far as your briefing, if you remember, what did the briefing entail from Mr. Corcoran?

Answer. He described to me the fact that there was an application pending for a gaming license at a non-Indian site—I guess in Hudson, Wisconsin, the race track, that was not doing well financially—and that our client, St. Croix, the St. Croix Indian Tribe, was opposed to that application.

Question. When you say your client was the St. Croix, that was the tribe that specifically hired O'Connor & Hannan?

Answer. That is correct.

Question. Did you have any involvement with the Minnesota Indian Gaming Association?

Answer. No.

Question. Who else was involved in the lobbying effort with the St. Croix?

Answer. At that point I was only aware of Tom Corcoran being involved in it. He brought it to me, and that was all I knew.

Question. Do you know Patrick O'Connor?

Answer. Yes; he is a senior partner in my firm.

Question. Were you aware of any involvement he had regarding this application at all?

Mr. ADLER. As of the time period that Corcoran first spoke to Mr. O'Donnell about it?

Mr. DOLD. Sure.

The WITNESS. At that stage I didn't know O'Connor had anything to do with the case. I wasn't aware of that.

EXAMINATION BY MR. DOLD:

Question. When did you first become aware of that?

Answer. Gosh, somewhere down the road, many months thereafter. I mean, I was in the case and out of it, and went about my business and worked on my own clients. I didn't pay attention to the matter once the application had been denied, which was in, I guess, July of that same year. I never focused on it really again until this current publicity welled up.

Question. Do you know, do you have a sense of who, what tribes, were opposed and who was for the application?

Answer. No. St. Croix was the only one that I ever focused on, and those tribes are very difficult to remember by name. So I mean if you asked me, without me going back to my notes, who the client was, I wouldn't have even remembered it was the St. Croix Tribe.

Question. Were you aware of the St. Croix Tribe making any political contributions on or around that time?

Answer. No.

Question. I know you have said that you had a meeting, or you had a meeting, before you set up a meeting with Senator McCain, with Tom Corcoran. Did you have any other meetings on the Hudson matter with anyone else besides Mr. Corcoran?

Answer. No. No, that was it. That was maybe a 15-minute meeting where I scribbled some notes, which you have, which have been submitted to you. That was it.

Question. And was it your belief that Mr. Corcoran was in charge of the lobbying effort?

Answer. Yes.

Mr. ADLER. Just a minute.

[Discussion off the record.]

Mr. DOLD. I am showing Mr. O'Donnell what has been marked as PO'D-1.

[O'Donnell Deposition Exhibit No. PO'D-1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

EXAMINATION BY MR. DOLD:

Question. For the record, having given us the information you have given us thus far about your meeting, these are some calendar entries from Patrick O'Connor. My reason for showing you these is simply to see if it might spark something in your mind as to what Mr. Corcoran might have said to you. If he didn't, we can breeze right through it.

Directing your attention really to the second page in there, on April 27th, it says, "St. Croix Tribe calls to White House and DNC regarding tribe's meeting with Chairman Fowler."

Did you have any idea your clients were meeting with Chairman Fowler or the effort to lobby was involving the White House or the DNC?

Mr. ADLER. Let me see if I can—I am confused by your question. Are you asking him whether or not when Mr. Corcoran briefed him in advance of the McCain meeting, whether or not Tom Corcoran referred to an earlier meeting with Mr. Fowler? Is that your question?

Mr. DOLD. Yes; or if he found out subsequent, after this meeting, during the time frame, on the way to the meeting with Senator McCain or after the meeting with Senator McCain, at the present time he was aware that they had contacted the White House or the DNC or that they had a meeting with Chairman Fowler.

Mr. ADLER. Break it down now and suggest that maybe the first question is, at any time prior to the meeting that Mr. O'Donnell went to with Mr. McCain involving this matter, was he aware of a prior meeting with Mr. Fowler? That is the first question.

Mr. DOLD. Perfectly worded.

The WITNESS. The answer is no.

Mr. ADLER. After the meeting with Senator McCain, did you become aware, other than from newspaper publicity, of a meeting involving Mr. Fowler and this Dog Track issue?

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. Let me ask the same question, broken down before and after the meeting with Senator McCain, regarding calls to the White House. Were you aware of any calls to the White House made on behalf of the St. Croix Tribe before the meeting with Senator McCain?

Answer. No, I was not.

Question. Were you aware after, with the exclusion of newspaper accounts?

Answer. No, I was not.

Question. And just for the record, I am not interested in what you have learned from the newspaper accounts, just your personal knowledge on this.

Answer. Yes.

Question. Turning to the next page, on May 5th, it talks about Indians, and then it has a dash 50 DNC - Larry Kitto committee to re-elect. Do you know Mr. Kitto?

Answer. Yes, I do.

Question. And who is Mr. Kitto?

Answer. He is an of counsel. He has an of counsel relationship with O'Connor & Hannan, or advisory; I guess he is one of our advisers, not an of counsel. I don't think he is an attorney.

Question. Do you know what the—in fact, I will represent to you that in depositions taken by Mr. Kitto, the 50 here is a number, denomination meaning 50,000.

Mr. ADLER. The deposition taken before the committee?

Mr. DOLD. No, it was not taken before the committee. Sworn testimony; I think we have seen a deposition of Mr. Kitto where he refers to this as being 50,000.

Mr. ADLER. In the Wisconsin litigation you are referring to?

Mr. DOLD. Yes.

EXAMINATION BY MR. DOLD:

Question. Were you aware of any fund-raising being done by O'Connor & Hannan? Let's leave it at that. Were you aware of any fund-raising being done by O'Connor & Hannan for the Committee to Re-elect, meaning the Clinton-Gore '96 campaign?

Answer. No.

Mr. ADLER. Involving this issue or broadly?

Mr. DOLD. I am sorry, it says Indians, 50 DNC.

The WITNESS. No, I was not aware of any.

EXAMINATION BY MR. DOLD:

Question. On May 9th there is a reference to a Tom Snyder, who I believe is Tom Schneider. Do you know a Tom Schneider?

Answer. Yes, I do.

Question. Who is Tom Schneider?

Answer. Tom has been of counsel or a partner of O'Connor & Hannan for the last couple of years.

Question. Did you attend any meeting where Mr. Schneider was present?

Answer. No. I didn't know he was involved in this case at all until just the other day.

Question. And how did you become aware that he was involved?

Answer. Newspaper.

Question. Newspaper.

Mr. YEAGER. Do you have any independent knowledge that he was involved in the case, apart from the newspaper?

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. On May 24th, the entry, May 24th entry here, Mr. O'Connor's calendar says trip to the Committee to Reelect, and in brackets it says Terry McAuliffe. Were you aware at any time about meetings that involved Terry McAuliffe regarding the Hudson Dog Track matter?

Answer. No.

Question. Down further it says dinner, Al Gore, discussion with Peter Knight and David Strauss regarding the Indian problem regarding Hudson Dog Track. Were you aware of any meetings or efforts to involve Peter Knight and David Strauss or Vice President Gore?

Answer. No, I was not.

Mr. ADLER. Other than from newspaper accounts.

EXAMINATION BY MR. DOLD:

Question. Just personal, not newspapers.

Answer. Yes. We are finished with this document?

Question. We are done with this document, and are going to move through some of the others based upon answers you gave us based on that first set.

[O'Donnell Deposition Exhibit No. PO'D-2 was marked for identification.]

Mr. DOLD. I am showing Mr. O'Donnell what has been marked as PO'D-2. It is a Minnesota Legislative Update from O'Connor & Hannan production. I am sorry, this is from Patrick O'Connor's production.

EXAMINATION BY MR. DOLD:

Question. The first page, it says, "We are arranging meetings for Tribal Officials to meet with the Chairman of the Democratic National Committee, and representatives from the White House." Just so I am clear on this, you have no knowledge

of any meetings, either with the White House or the DNC, other than newspaper accounts?

Answer. That is correct.

Question. On the second page—

Mr. ADLER. Or discussions with his counsel, in the presence of counsel.

EXAMINATION BY MR. DOLD:

Question. Really focusing your attention to the bottom, where it says "The message was quite simple: all of the people against this project," referring to the Hudson Dog Track, "both Indian and non-Indian are Democrats who have substantially large blocks of votes and who contribute heavily to the Democratic Party" And then, "In contrast, all of them," and the rest is blank.

My question to you is, at any time in your dealings with the Hudson Dog Track matter, was it conveyed to you that this was a point that needed to get across to the people that you were lobbying?

Answer. No.

Mr. YEAGER. Did you ever make that point?

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. And, again, you don't know about any donations made to the DNC or the Clinton-Gore Re-elect by the St. Croix Tribe?

Answer. No.

[O'Donnell Deposition Exhibit No. PO'D-3 was marked for identification.]

Mr. DOLD. I am showing Mr. O'Donnell what has been marked PO'D-3, which is a letter to Senator John McCain from the O'Connor & Hannan—

Mr. ADLER. Do you have an extra copy?

Mr. DOLD. I am sorry. Just so you know, at the end of the deposition, due to our protocols and because we are in executive session, we need to take the documents back.

EXAMINATION BY MR. DOLD:

Question. The date of the letter from O'Connor & Hannan is July 20th, 1995, signed at the bottom by Thomas J. Corcoran and Patrick E. O'Donnell.

Do you recall sending this letter?

Answer. Yes.

Question. A handwritten notation at the top says "meeting at 2:30 p.m. 6-8-95." Does that jibe, about the same time that you would have had that meeting with Senator McCain?

Answer. I think so.

Question. Who attended this meeting, if you recall?

Answer. Tom Corcoran and myself. Frank Ducheneaux was also there.

Question. What was his function?

Answer. He was a consultant to various Indian tribes, former Hill staffer.

Question. Just the three of you, or were there others involved?

Answer. That is all I recall being in the room.

Mr. ADLER. And the Senator.

The WITNESS. Yes, and the Senator.

EXAMINATION BY MR. DOLD:

Question. It wouldn't have been much of a meeting without him. Can you tell me basically what was discussed at that meeting?

Answer. We brought to the Senator's attention an article from the Wall Street Journal that made overtones to—made a thrust that the owner of the track was Mafia-connected, and asked him, because of his strong conviction and desire to keep the criminal elements out of Indian gaming, to take a look at it. We didn't know whether it was true, false or otherwise, but we thought he should be aware of it.

Question. Okay. In the second paragraph it says, "Many, many thanks to you for your help with the Department of Justice. Without your assistance, we do not believe BIA Headquarters would have overturned its Minneapolis area office on this matter."

What did you mean, or what help did Senator McCain provide with Department of Justice?

Answer. Well, at the meeting, and I am a little bit vague on what he said specifically, but it was my impression that he indicated that he would take this matter

by the Justice Department, and so I was at that point presuming that he had and thanking him for his assistance.

Question. Do you know if he actually ever did?

Answer. I don't.

Mr. DOLD. A moment ago you mentioned that a newspaper article in the Wall Street Journal was kind of providing a thrust for you. Let me just show you what has been marked as PO'D-4.

[O'Donnell Deposition Exhibit No. PO'D-4 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. This is the handwritten note on the front which reads, "Pat O'D. Attached are two articles on Delaware North." I don't know what that is, perhaps "regarding Indian gaming. T.C."

Do you know who "T.C." is referring to? Is that Tom Corcoran?

Answer. Yes, that is correct.

Question. Did you receive—do you recall receiving this article or receiving this note?

Answer. I do.

Question. Okay. And if you want to take time to read this over, that is fine. I am interested as to what areas of the article particularly jumped out at with you with regard to the Hudson Dog Track and its connection to Delaware North.

Mr. ADLER. I think at this point here I would ask you for a proffer as to what in the world Delaware North has to do with fund-raising.

Mr. YEAGER. I am interested in that answer, as well.

Mr. DOLD. What we are interested in is, in talking to other people in their depositions, Delaware North and its supposed Mafia connection was a big taboo and would have been a big hindrance in approving this application, and was key in a lobbying effort to overturn the Hudson Dog Track, deny the application.

And we also know that there was a fund-raising effort going on, or at least we believe there was one going on, from the opposing tribes, and this was one of a number of tactics to overturn this decision. So that is really how it kind of ties up and connects. We are interested as to why this matter would have been tied to it at all.

Mr. YEAGER. If I could make an observation, it is all very interesting, what tactics this firm used or didn't use to oppose this application. I think we see a connection between allegations of fund-raising improprieties and this application in general. I don't see how the inquiry into the particular tactics of a law firm relates directly, indirectly, or even by several degrees of separation to the core mission of this committee. I don't think the explanation clears that up.

Mr. ADLER. Let me add to that. I listened carefully to your proffer, and I agree with the comment by Mr. Yeager that there is an ostensible basis in terms of looking into this application and the denial of it involving any linkage to fund-raising solicitations or contributions.

By its own terms and from what you have said, Delaware North had absolutely, in that whole issue, no connection to fund-raising. It is a matter of public record that there were statements made about Delaware North to Senator McCain, but I don't hear you to say that either Delaware North or anyone involved in terms of who the owners were, were making contributions or promised to make contributions or solicited contributions.

Whether or not Delaware North was in fact Mafia-connected or whether it was in fact the owner or what was said about that, I don't understand the connection. This issue we are talking about is squarely what is involved in the D.C. litigation, and I am counsel of record personally on that.

Mr. YEAGER. If I could add one other remark, the Minority is interested in this question because pertinency bears on the power of the committee to inquire. It bears on this committee's jurisdiction and its ability to compel witnesses to answer questions. I think the Minority has expressed concerns from the beginning of the investigation that its focus—and I don't mean to direct any criticism to counsel—has been scattershot, and that is a charitable characterization. I think this is an example of that, and the Minority is concerned about reining in the investigation and keeping it on focus.

Mr. DOLD. I would like to add, unless you have something further—

Mr. ADLER. No. I have got to make a decision here as to whether I am going to let him testify. Let me get this out, please. I would ask you to move on, essentially, because I don't think Delaware North has anything to do with anything that you could conceivably look into. If you refuse and you insist on the questioning this witness, and the same question will come up tomorrow with Mr. Corcoran, then I am going to have to make a decision as to whether to let him testify.

So the record is clear, I would say in the D.C. case, the defamation case filed against Mr. O'Donnell and Mr. Corcoran squarely involved this meeting with Senator McCain. You obviously have a legislative mandate, but I don't understand how, and I don't have a copy of your authority with me, I don't understand how Delaware North has anything to do with fund-raising. Rather than get into a big fight about it, I would urge you to move on here.

Mr. DOLD. Let me just say that—at least the way I see it, and there are other people who may have different opinions on this within the committee—that contributions from—numerous opposing tribes to the Hudson application were donating large or making large contributions based upon and tied to the success of the effort to stop the application. And therefore turning down the Hudson application meant dollars, not only to, and this is again my belief, but contributions were tied to the success of turning down this application.

Once this application was denied, we see large campaign contributions coming into the coffers of the DNC and the Committee to Re-elect. We have reports that over \$300,000 from those opposing tribes flowed into Democratic coffers as a result of this decision, or we believe as a result of this decision.

That is how I think it ties in, is because it ties into the basic belief that the Delaware North angle of this thing was a factor. As noted in your letter, "Without your assistance, we do not believe the BIA headquarters would have overturned its Minneapolis area office on this matter." Clearly we have got statements from Mr. O'Donnell that the subject matter of the meeting with Senator McCain was this area with Delaware North.

Now, I am not interested in the defamation aspects of it, but I am interested as to where they got the information regarding Delaware North and why it was a plan to use Delaware North, when in my reading of the Wall Street Journal article, Delaware North is in no way tied to the Hudson Dog Track, and we have since learned that Delaware North does have ties to other dog tracks in the Wisconsin area, but not the Hudson Dog Track.

So that is where I would like to go with this. That is where I leave it with you.

Mr. YEAGER. I think I have to respond to the counsel's statement. Minority, without going through it item-by-item, Minority disagrees wholly with counsel's characterization of the facts. They are not supported on this record, on the public record of the Senate, in the public domain, or by any facts from any other source we are aware of.

Mr. ADLER. We are also not aware, and maybe you can make a proffer on that, this Delaware North issue we are describing, has it ever made its way to the Interior Department, and was it ever seen by the decision-makers there in terms of its review?

Let me talk to my client for a second.

[Counsel confers with witness.]

Mr. ADLER. Let me go back on the record. With that proffer, I am going to allow him to answer these questions. We are here to cooperate with you. I would say for the record I am not totally persuaded that your proffer establishes the point you are trying to make, but as I say, we are here to cooperate with you, so Mr. O'Donnell would be pleased to answer your questions.

Mr. YEAGER. We will not press the objection, but I think the record will reflect that the question is not pertinent to the subject matter of the deposition.

The WITNESS. It answer your question, I remember what it was. There is nothing in the Wall Street Journal article that states that there is an ownership by Delaware North of this particular track. We were advised that the ownership status did exist, and I was advised of that by Mr. Corcoran, and that was the basis for the linkage that I referred to.

Mr. DOLD. Okay. I am showing the witness what is being marked as PO'D-5.

[O'Donnell Deposition Exhibit No. PO'D-5 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. These appear to be some handwritten notes. I know you made reference to some notes a moment ago. Do you know whose notes these are?

Answer. These are my handwriting.

Question. And at the top it is "6-2-95," and "Senator McCain matter" underlined, client is the St. Croix.

Were these notes taken at that meeting you referred to with Mr. Corcoran?

Answer. Yes.

Question. Delaware North has in the past, I am aware, had been written on numerous occasions as having possible Mafia connections, and I see down at the bottom here that that issue was raised.

Is the reason that you went to see Senator McCain that you believed that he would take a more passionate stance with regard to Delaware North, or thinking that the—that possible gaming interests would be controlled by those who had possible connections to the Mafia?

Answer. I don't know whether I would use the word, "passionate," but it was because of his role as the Chairman of the Indian Gaming Committee and his stated public and private comments about how vital it was to keep the criminal element out of Indian gaming, that that was the reason we went to see him.

Mr. DOLD. I am showing the witness what has been marked POD-6. It is a fax from Tom Corcoran. The name at the top is Lewis Taylor, slash, Mary Hartmann. Total number of pages, including the cover, is two, and the date is 6-13-95. And the bottom says, "Lewis, mission accomplished. Justice will be looking to Delaware North and Hudson."

Have you seen this before

[O'Donnell Deposition Exhibit No. PO'D-6 was marked for identification.]

The WITNESS. Yes.

EXAMINATION BY MR. DOLD:

Question. Okay. The TC on the cover page, I assume, is Tom Corcoran?

Answer. That looks like his handwriting.

Question. My question really involves what mission were you trying to accomplish? Or was that Corcoran's thing.

Mr. ADLER. That was Corcoran.

EXAMINATION BY MR. DOLD:

Question. Did Mr. Corcoran explain to you that there was a mission in your meeting with—or did you articulate a mission?

Answer. Well, the mission was just to hopefully—

Mr. ADLER. The question was, did Mr. Corcoran, if I understood your question, in advance of your meeting with Mr. McCain, tell you there was a, quote, mission? Did he ever use that word?

The WITNESS. No, he never used that word.

Mr. ADLER. That's the question.

EXAMINATION BY MR. DOLD:

Question. And what was your—was there an intent articulated by Mr. Corcoran?

Mr. ADLER. Wait a minute. Before the McCain meeting?

Mr. DOLD. Before the McCain meeting, with regard to Senator McCain.

Mr. YEAGER. I am sorry. I didn't catch that.

EXAMINATION BY MR. DOLD:

Question. Was there an intent that Mr. Corcoran articulated that they wanted to get from the McCain meeting?

Answer. I already stated they wanted to get the Senator's attention on this project and the relative publicity attached thereto.

Question. On the second page of the attached fax, it is a memo from yourself to Tom Corcoran regarding the McCain meeting. The date on it is June 13th, 1995. The bottom reads, "During the Williamsburg activities over the weekend, Senator McCain advised that he already sent the letter,"—I am sorry—"sent the matter we discussed to the Justice Department."

Did you actually speak to Senator McCain in Williamsburg?

Answer. Yes, I did. I did speak with him.

Question. Can you tell us the substance of the conversation?

Answer. I spoke to him over the weekend a lot. It was a full, long weekend with senators. This was the essence of the subject that we are talking about right then. He had indicated that he sent the matter on for review and that was that. We were pleased with that at that time.

Mr. YEAGER. If I may interject a quick clarifying question?

Mr. DOLD. Sure.

Mr. YEAGER. Do you know if the Justice Department played any role in the denial of the application to take land in the trust?

The WITNESS. No, I don't.

Mr. YEAGER. Are you aware of any communications between the Justice Department and the Department of the Interior on this subject?

The WITNESS. No, I am not.

Mr. YEAGER. Do you have any independent knowledge that the Justice Department was, in fact, informed about any possible connection with Delaware North?
The WITNESS. No, I do not.

EXAMINATION BY MR. DOLD:

Question. Do you know why you wanted to get the Justice Department this information?

Answer. I don't—

Mr. ADLER. There is no foundation that he did.

The WITNESS. Yeah. We had not—

Mr. DOLD. I am asking if there was—

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. Why did you—there was not—your intent was not to inform or have the Justice Department informed of this matter?

Answer. No, no.

Question. Okay. Do you know why Mr. Corcoran would have sent this memo to Lewis Taylor?

Answer. Other than—

Mr. ADLER. Are you asking him to speculate or are you asking him whether he knows from a discussion he had with Mr. Corcoran as to why he did send this memo?

Mr. DOLD. I was asking if he has any personal knowledge as to why this was sent.

The WITNESS. No.

Mr. ADLER. I will try to straighten it out here and help the record a bit.

Mr. DOLD. All right.

Mr. ADLER. And he will confirm this. At the meeting with Senator McCain, neither O'Donnell nor Mr. Corcoran asked Senator McCain to contact the Justice Department. Does that help you out?

Mr. DOLD. Sure.

Mr. ADLER. Then he can confirm us.

EXAMINATION BY MR. DOLD:

Question. Did you ask the Justice Department or did you ask Senator McCain to contact the Justice Department at all at this meeting?

The WITNESS. No.

Mr. YEAGER. Did he volunteer to do that?

The WITNESS. I had the impression that he had, but I couldn't swear to that. I don't recall exactly. He expressed an interest and said, I will look into it. Whether he said Justice Department in the first meeting or not, I don't know.

EXAMINATION BY MR. DOLD:

Question. When you say first meeting, how many meetings did you have with Senator McCain?

Answer. Well, the meeting at Williamsburg and the meeting in his office.

Question. At the meeting in his office, the Justice Department, did it come up at all?

Answer. I have a memory that he mentioned it.

Mr. ADLER. He being Senator McCain?

The WITNESS. He, McCain, mentioned it as a possible place where he would send the matter.

Mr. DOLD. I am showing the witness what is being marked as POD-7. It is a, I guess, fax to Mr. Corcoran from Larry Kitto, with an attached memo, dated June 5th, 1995, to the tribal clients from Mr. Kitto regarding the Hudson Dog Track issue.

[O'Donnell Deposition Exhibit No. PO'D-7 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Mr. O'Donnell, have you ever seen this document?

Answer. I think I have. I am not certain.

Mr. ADLER. If you had seen it, was it part of your preparations for the deposition as opposed to being involved—

The WITNESS. No, it was not.

Mr. ADLER [continuing]. Being involved in the work itself, do you know?

The WITNESS. No, it was not part of the preparation for this meeting.

EXAMINATION BY MR. DOLD:

Question. When, if you recall, did you see this memo?

Answer. This is recent times. Not anywhere near the date that it was written. I am talking about after the publicity and what have you.

Mr. ADLER. Did you see this as part of your substantive work on this Dog Track project?

The WITNESS. No, I did not.

EXAMINATION BY MR. DOLD:

Question. I am just going to draw your attention to item No. 7. It says, "Increase pressure and communications with the White House through Vice President Gore's office, the National Democratic Committee and the Committee to Re-elect the President." It says, "Larry Kitto and Pat O'Connor will pursue this."

Did you have any knowledge at the time you were dealing with the Hudson Dog Track that this was going on?

Answer. No, I did not.

Question. I was going to show you another exhibit, but I think I can get around it by just asking you, Mr. O'Connor had sent a number of letters to various people and I want to know, did you help Mr. O'Connor in drafting any letters? Did you give him any information or were you aware that he was sending letters to Harold Ickes or Donald Fowler or David Mercer, any of those people?

Answer. The answer is, no, to all of the above.

Mr. ADLER. Other than what he subsequently learned after he was no longer involved?

Mr. DOLD. Right.

The WITNESS. Yes.

Mr. ADLER. Okay.

Mr. DOLD. I am showing Mr. O'Donnell what has been marked POD-8. This is a memo to the tribal clients from Larry Kitto and Tom Corcoran, 12 November 1995 regarding Hudson Dog Track. Item No. 6 on the second page says, "As we know, this issue became very political and neither the White House or those in Congress who supported us will want this issue to come up again during the 1996 election year."

[O'Donnell Deposition Exhibit No. PO'D-8 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. My question to you, Mr. O'Donnell, is: Who in the White House supported the effort to turn down the track or supported Mr. Kitto and Mr. Corcoran?

Answer. I don't have any idea.

Question. Even to date, you have no idea who at the White House he would have been talking about?

Answer. No. I just never discussed it with anybody.

Mr. ADLER. Once again, we are excluding whatever he has read in the newspaper?

Mr. DOLD. Not newspaper accounts.

The WITNESS. We said that earlier.

Mr. DOLD. Any conversations he might have had with Mr. Corcoran subsequent to or at any time if they might have mentioned people in the White House that were supporters. That's what we are talking about.

EXAMINATION BY MR. DOLD:

Question. And your answer is still, no?

Answer. Yes.

Mr. DOLD. I am going to show Mr. O'Donnell three exhibits, all billing records from O'Connor and Hannan to St. Croix, at least invoices and they will be marked as POD-9. I guess we can just add them altogether; POD-9 will be the billing statements. We have got statements really from August 9th, from September 14th and the last is from December 13th.

The yellow highlighter on the initial first page is mine and should not be noted as one we received.

Mr. YEAGER. Are these separate exhibits?

Mr. DOLD. We are going to make them all one exhibit just for simplicity's sake.

[O'Donnell Deposition Exhibit No. PO'D-9 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. August 9th, it just makes a reference, I believe, down there, discussions with Pat O'Donnell. Do you have any idea or any memory as to what these discussions were about?

Answer. No, I don't.

Mr. ADLER. Other than what you have already testified to?

The WITNESS. Yes. On August 9th, I don't know specifically what they were about. I am not questioning that they occurred.

EXAMINATION BY MR. DOLD:

Question. On September 14th, it says, discussions with P. O'Donnell regarding a meeting scheduled with Senator McCain.

Answer. September 14?

Question. Yes. I am sorry. It is going to be right at the top. Discussions with P. O'Donnell regarding meeting scheduled with Senator McCain set for Friday, August 4th.

Do you recall what this was about or if this occurred? Do you recall what this was about, this notation?

Answer. No, I don't. That date—I don't recall that date reference at all.

Question. Down at the bottom of that, I guess it would be paragraph, it is kind of rambling down here, the last sentence says, "Telephone discussion and meeting with senior White House staff and POTUS regarding expansion of gaming and the dog track and opposition to so doing."

Mr. ADLER. Where are you exactly?

Mr. DOLD. Here.

EXAMINATION BY MR. DOLD:

Question. Reading, telephone discussion.

Answer. Okay. Yeah.

Question. Do you recall what this was?

Answer. No, I do not.

Question. Do you recall anybody talking about a meeting or a phone call with senior White House staff and the President?

Answer. No.

Question. Again, on the second page of the September 14th invoice, the second paragraph, it says, "Discussions with P. O'Donnell regarding meeting with Senator McCain."

Do you know what this was about?

Answer. No, I do not.

Question. Okay. And I am going to turn to the December 13th portion of the exhibit, down the 4th paragraph. It says, "Meeting with P. O'Donnell regarding Senator Dole; discussions with Larry Kitto; discussions with P. O'Donnell regarding 11:00 a.m. November 9 meeting with legislative aide to Senator Dole."

Do you recall what this was about?

Answer. No, I don't. I don't recall that date at all.

Question. Do you recall if you would have talked to Senator Dole or Senator Dole's staff regarding the St. Croix tribe involving the Hudson Dog Track matter?

Answer. I don't recall ever discussing it with them; I really don't. I am just at a loss on that date. I don't know what that was about.

Mr. YEAGER. Let me just make an observation for the record.

Mr. DOLD. Sure.

Mr. YEAGER. The August 9th, 1995 document lists at the very top of the page, Hudson project; nature of matter, dog track. The September 14th, 1995 document is entitled Indian Gaming Regulatory Act. And the December 13th document reads, Indian Gaming Regulatory Act.

The WITNESS. Yeah.

Mr. YEAGER. So is it possible that these documents had no bearing at all on the Hudson casino matter?

The WITNESS. Yes. I think that's probably the case.

Mr. YEAGER. At least some of them. I see some of these documents refer specifically to the dog track, but it is also—

Mr. DOLD. And also for the record the decision coming out of the Department of the Interior came down on July 14th, 1995, and this is a December thing.

The WITNESS. Yeah.

EXAMINATION BY MR. DOLD:

Question. I am wondering if there are any loose ends or anything you might have been doing regarding this at any time?

Answer. I don't think there is any connection at all.

Question. Have you ever worked with Tom Collier, John Duffy, Ada Deer, George Skibine or Michael Anderson? Those are all Department of Interior officials.

Answer. I don't know—I haven't worked with any of them except Collier on a totally unrelated matter to this matter.

Question. Do you know of any White House meetings that you did not attend dealing with the Hudson Dog Track?

Answer. Do I know of any meetings that I did not attend? I didn't attend any meetings that had anything to do with the White House.

Question. I understand. But are you familiar with any meetings that did occur on the Hudson Dog Track that you did not attend that might have been attended by Mr. O'Connor, Mr. Corcoran?

Answer. No, I am not.

Question. Has anyone ever discussed the political affiliation of any tribal representatives regarding the Hudson Dog Track, like Gaiashkibos as being a Republican or having any political affiliation?

Answer. No.

Question. Did Mr. Corcoran or anyone involved in the lobbying effort ever discuss Governor Thompson's position—when I say Governor Tommy Thompson of Wisconsin—his position on the Dog Track?

Answer. No.

Question. Has anyone ever mentioned, that was involved in the lobbying effort, that the Minnesota tribes had been strong Democratic supporters?

Answer. No.

Mr. DOLD. I have nothing further right now. Let me review, but I have no further questions.

Mr. YEAGER. I would like to take a few minutes, if I could.

Mr. DOLD. Sure. What would you like, 5 minutes?

Mr. YEAGER. Three minutes.

Mr. DOLD. Let's go off the record. Three minutes okay?

Mr. ADLER. Fine.

[Recess.]

Mr. YEAGER. Do you have anything further, counsel?

Mr. DOLD. No.

Mr. YEAGER. On behalf of the Minority, I would like to thank Mr. O'Donnell for coming in voluntarily. I know it is an imposition to come in, but I think that—I think this deposition has been short and to the point. I thank counsel for that.

EXAMINATION BY MR. YEAGER.

Question. Mr. O'Donnell, was there any understanding, so far as you know, at your firm, to raise funds or contribute funds in connection with any decision rendered by the Department of the Interior in this matter?

Answer. No.

Question. There was no plan?

Answer. Nothing that I was privy to.

Question. Okay.

Answer. You have to understand that I typecast and I work on the Republican side so I wouldn't have been consulted on this.

Question. Do you have any reason to believe that there was any such plan?

Answer. I have no knowledge whatsoever on it.

Question. Okay. Do you have any reason to believe that improper influence was brought to bear in the decision-making in this case?

Answer. No, I do not.

Question. Do you have any reason to question the integrity of the Secretary of the Interior, Bruce Babbitt?

Answer. No, sir.

Mr. YEAGER. I have nothing further.

Mr. DOLD. Mr. O'Donnell, on behalf of Mr. Eynon and myself and the members of the committee, we thank you very much for coming in.

Mr. Adler, thank you as well.

Mr. ADLER. You are welcome.

The WITNESS. You are welcome.

[Whereupon, at 11:25 a.m., the deposition was concluded.]

[The exhibits referred to follow:]

02/16/78

Meeting at Inspector with Tom Carson, Larry
Kite and Tom Callier. Meeting at DMC with
Truman Arnold and Chairman Don Foster.

REDACTED
MATERIAL

02/16/78

Discussion with Tom Carson regarding meetings
at Inspector and DMC.

REDACTED
MATERIAL

ATTORNEY'S
EYES ONLY





ATTORNEY'S
EYES ONLY

[illegible]

7 SUNDAY MAY 7, 1966 417-235-0854
APPOINTMENTS & SCHEDULED EVENTS

Deborah Fox to John

TO BE DONE TODAY (ACTION LEFT)

REDACTED MATERIAL

EXTENSIVE & MISMANAGEMENT RECORD:

Time	Activity	Location
8:00	SE. Every time to Howard John	
9:00	Back to John's house to	
10:00	John's house to	
11:00	Back to John's house to	
12:00	Back to John's house to	
1:00	Back to John's house to	
2:00	Back to John's house to	
3:00	Back to John's house to	
4:00	Back to John's house to	
5:00	Back to John's house to	

DC 000071

ATTORNEY'S
EYES ONLY

16 TUESDAY
MAY 16, 1995

4. Report to the
State Tax System

REDACTED
MATERIAL

Wife and John Sutton:

476 288 K off cylinder
288 K off cylinder
EXPENSE & REVENUE IN THE CARD:
may 23 - 4 links

EXPENSE & REVENUE IN THE COND:

505

TUESDAY **16**
MAY 16, 1985
DAILY AND WORK RECORD
NAME: LYN PROHCT
PH: 70 - Day 136 278 Leth
DATE: 10/4

to every thing. He has been very
 willing to report from Jim Smith's
 place, as he has been from Jimmie's.
 He has been to the place where
 the Indians are now living,
 and has been to the place where
 the Indians are now living, at
 the place where the Indians are
 now living.

REDACTED MATERIAL

OC 000077

ATTORNEY'S
EYES ONLY

MAY 24, 1968

11

REDACTED MATERIAL

DOUGLAS A. MULLER/DOUGLAS RECORD:

THE UNIVERSITY OF CHICAGO

WE DOWNSDAY

MAY 24, 1963

Don't

Appendix

1. Every year
 2. Report to the Committee to
 3. Reform; (they have a right)
 4. to make, judge, eliminate
 5. 3. National Finance Committee
 6. House will be asked to take
 7. report for action; Dismiss
 8. knight and David
 9. Starn and
 10. problem re. Nelson
 11. day road

REDACTED MATERIAL

DC 000000

**ATTORNEY'S
EYES ONLY**

SWING C1

TO BE DONE TODAY (ACTION LIST)

SUPREMACY & REINFORCEMENT RECORD:

WATSON AND WONG DEFEND
3.750 call **MAY 26.**

REDACTED
MATERIAL

Every file
pertaining to Emerson per
most disbursements raised Patro
Nightingale, August showed at
all home, Quincy; possibly
on meeting will have 2003 May

DC 000001

ATTORNEY'S
EYES ONLY

ATTORNEY'S
EYES ONLY

1

REDACTED MATERIAL

[illegible]

OC 00008

ATTORNEY'S
EYES ONLY

19

WEDNESDAY
JULY 18, 1985

APPOINTMENTS & SCHEDULED EVENTS

*1 call waiting
a dog bark*

WEDNESDAY
JULY 18, 1985

19

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

DATE	DESCRIPTION	AMOUNT
7/18/85	5:00-7:00 PM	
7/18/85	7:00-8:00 PM	
7/18/85	8:00-9:00 PM	
7/18/85	9:00-10:00 PM	
7/18/85	10:00-11:00 PM	
7/18/85	11:00-12:00 AM	
7/18/85	12:00-1:00 AM	
7/18/85	1:00-2:00 AM	
7/18/85	2:00-3:00 AM	
7/18/85	3:00-4:00 AM	
7/18/85	4:00-5:00 AM	
7/18/85	5:00-6:00 AM	
7/18/85	6:00-7:00 AM	
7/18/85	7:00-8:00 AM	
7/18/85	8:00-9:00 AM	
7/18/85	9:00-10:00 AM	
7/18/85	10:00-11:00 AM	
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7/18/85	1:00-2:00	

17

THURSDAY
AUGUST 17, 1995

APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

12

11

10

9

8

7

6

5

4

3

2

1

17

THURSDAY
AUGUST 17, 1995

DIARY AND WORK RECORD

REDACTED MATERIAL

Handwritten notes:

1. Every body
 2. Call from David's house
 3. of the 10:00 C. in 2 minutes
 4. with note of 10:25 AM
 5. to David's house 10:30
 6. by car from 10:30 to 10:45
 7. from 10:45 to 11:00 AM
 8. from 11:00 to 11:15 AM
 9. from 11:15 to 11:30 AM
 10. from 11:30 to 11:45 AM
 11. from 11:45 to 12:00 PM
 12. from 12:00 to 12:15 PM
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MONDAY
SEPTEMBER 11, 1983
APPOINTMENTS SCHEDULED EVENTS
Date 7-11-83

REDACTED MATERIAL

MONDAY
SEPTEMBER 11, 1983
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St. Mary's
Meeting Report for Bureau
in Rock Point and St. Mary's
Call to Conference with
unit to be held in 12:30 P.M.
in St. Mary's, Oklahoma
to discuss the Oklahoma

REDACTED MATERIAL

OC 000092

ATTORNEY'S
EYES ONLY

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IV. HUDSON DOG TRACK UPDATE

At last week's NIGA conference in Green Bay, WI, the following Tribal Officials met jointly to plan a strategy to defeat the Hudson Dog Track proposal.

Minnesota Tribes attending

Shakopee
Prairie Island
Mille Lacs Lake

Wisconsin Tribes Attending

St. Croix
Oneida
Ho-chunk

We are arranging meetings for Tribal Officials to meet with the Chairman of Democratic National Committee, and representatives from the White House on Thursday, April 28th. Please note: We will forward a schedule as soon as it is available.

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MATERIAL**III. HUDSON DOG TRACK UPDATE**

On Friday April 18, a delegation of tribes from Minnesota and Wisconsin met with DON FOWLER, CHAIRMAN OF THE DEMOCRATIC NATIONAL COMMITTEE (DNC). The purpose of the meeting was to request the DNC and the Committee to re-elect the President, to help communicate with the White House and the President about why the Department of the Interior should not approve the fee-to-trust land transfer for the Hudson Dog Track. The message was quite simple: all of the people against this project, both Indian and non-Indian are Democrats who have a substantially large block of votes and who contribute heavily to the Democratic Party. In contrast, all of

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*9/5
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July 20, 1995

The Honorable John McCain
United States Senate
241 Russell Senate Office Building
Washington, D.C. 20510-0303

(meeting at 2:30 PM 6/7/95)

Dear John:

As you will recall, last month we met with you regarding the proposed conversion of a dog track in Hudson, Wisconsin, to an Indian gaming casino which would bail out the dog track owner, Delaware North of Buffalo, New York. Enclosed is the announcement by the BIA about their decision to deny this application.

Many, many thanks to you for your help with the Department of Justice. Without your assistance, we do not believe BIA Headquarters would have overturned its Minneapolis area office on this matter.

Sincerely,

[Signature]
Thomas J. Corcoran

[Signature]
Patrick E. O'Donnell

jj
enclosure



(594-001-1)

Pat O'D

Attached are two
articles on Delaware North
in *Interim* journal.

TZ



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THE WALL STREET JOURNAL

Sins of the Father?

**Concession King's Son
Fights Mob Stigma
As He Builds Empire**

**Delaware North's Businesses
Appear Gangster-Free,
But Regulators Wonder**

Hosting You at Yosemite

**By John R. Emshwiller
Staff Reporter of The Wall Street**

Journal

11/17/94

WALL STREET JOURNAL (2), PAGE A1

BUFFALO, N.Y. -- Settling into his private jet for the flight to his Palm Beach winter estate, Jeremy Jacobs tells a reporter along for the ride that there will be a small delay. "A surprise guest," he says with a grin.

A few minutes later, a station wagon rolls up and a magnificent German shepherd is brought aboard. She is one of the family watchdogs, trained in the former East Germany. Mr. Jacobs explains that when he is away she tends to bite the other dogs.

The pooch sits comfortably next to her master. "What other animals do you have?" asks Mr. Jacobs.

In his own way, Mr. Jacobs also does guard duty. He is the fierce protector of a remarkable 75-year family. Founded largely with what would be considered a hostile takeover, but has conquered Caesar's enemies as well.

The 44-year-old Mr. Jacobs owns and runs Delaware North Cos. here. If you stay in a hotel at Yosemite National Park, watch an event at Boston Garden, place a bet at Arkansas's only dog-racing track, gulp a hot dog and beer at Detroit's Tiger Stadium or peruse an in-flight magazine on a Delta jet, you have encountered one of the dozens of faces of Delaware North. The company has more than 200 operating units in 39 states and six countries. Annual revenues top \$1 billion. More than 15,000 people work for the concern. All, unequivocally, answer to one man.

He, in turn, answers to the memory of another: his father, Louis Jacobs built the company literally from peanuts, which he and two brothers sold as boys. He lived

for his firm and died for it, succumbing to a heart attack one night at his desk in 1968 while putting in yet another 16-hour day.

The 65-year-old patriarch left his then-15-year-old son with a rich but embattled empire. At the time of Lou Jacobs' death, investigators were probing the intensely private company for evidence of organized-crime ties.

Mr. Jacobs vociferously proclaimed his firm's and his father's innocence. But in 1972, the company, known then as Empire Corp., was convicted of a felony stemming from mob-related business deals. That same year, Sports Illustrated magazine put the late Lou Jacobs on its cover under the headline "The Godfather of Sports."


The conviction threatened the existence of the company. As a felon, it faced the possibility of losing the hundreds of contracts and licenses that formed its foundation.

So Jeremy Jacobs launched a campaign to defend his company that continues to this day. He has sought help from local politicians and a president of the U.S., while using his vast wealth -- estimated at half a billion dollars -- to reward allies and punish enemies. His battlefields have included the halls of Congress. He has changed the company's name and even jetted a brother from the executive suite.

Richard Stephens, Delaware North's president, likens the Mafia stigma to "a ghost that won't go away." Competitors still regularly send would-be customers the old press clips about Empire and the mob, some business opportunities "we don't hear about until after they are done," he gripes. Mr. Jacobs proclaims his company is clean and says he has spent a "horrific amount of money and years" in the struggle to prove it.

Yet some state regulators say they continue to have doubts. Though they have found no direct evidence of wrongdoing since the 1972 conviction, they still wonder: Has Mr. Jacobs engineered a cleanup or a whitewash? It is a question that seems destined to plague the company for at least another generation.

Mr. Jacobs doesn't deny that his father traveled in a rough-and-rumble world. Lou Jacobs built the company by obtaining lucrative concession contracts at sports facilities and other locations in return for providing millions of dollars in upfront payments and loans to stadium and team owners. Such were his financial contributions to major-league baseball -- where Delaware North is concessionaire to a quarter of the 28 teams -- that when Lou Jacobs died,

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the Sporting News suggested a special commemoration be set up at the Baseball Hall of Fame.

Some of those loans went to horse tracks, dog tracks and rail sidings. Besides concessionaire, the company also became owner and operator of a number of such facilities. Mr. Jacobs says his father's forays into the gambling world unavoidably put the company into contact with questionable characters. "It went with the territory," he says.

But some federal officials viewed the contacts as hardly innocent. In 1973, five years after Lou Jacobs' death, a report by the House Select Committee on Crime concluded that "Empire knew or should have known" that it was the financier or business associate for operations with alleged mob connections stretching from New England to Nevada.

That report came on the heels of the April 1972 conviction of Empire in Los Angeles federal court. A jury found that the company had conspired to hide its ownership interest and the interests of two reputed mob figures in the Frontier Casino in Las Vegas. According to the jury, Empire had made hundreds of thousands of dollars in loans to front men for the alleged mobsters at the casino. The late Lou Jacobs and his son Max were named as undicted co-conspirators.

By this time, Jeremy Jacobs was already firmly in charge of the company. Following the conviction, he held Empire's first news conference to denounce "a vicious and deliberate effort to smear" his father and the company. He vowed, "We will not allow either political opportunists or business competitors to profit at the expense of my late father's good name." Empire appealed the conviction all the way to the Supreme Court, which refused to consider the company's entreaty.

The conviction immediately gave Empire and the Jacobs clan a certain notoriety. "I remember coming home and my mother telling me I worked for the Mafia," says Jessica Ranuna, then a fledgling company employee and now assistant to the president of Delaware North.

To protect his daughters, "Mr. Jacobs went to jail and his critics. One was a congressman from Arizona, Sam Steiger, who sparked a 1973 House investigation of Empire and traveled around the country speaking against the company. The firm sued the Republican and one of its lawyers denounced him in congressional hearings as an 'evil man'."

In 1976, Mr. Jacobs and Mr. Steiger met for the first and only time in Buffalo and came to an agreement: Empire would drop its suit if Mr. Steiger wrote a letter praising current management and supporting the company's petition for a presidential pardon.

Today, Mr. Steiger says he did so because he was about to leave office and was nearly broke from the costs of

Empire's libel suit. The pardon was eventually named down by President Carter. But, Mr. Steiger says, "Empire used that letter in every regulatory hearing from then on" as evidence that even its strongest critics had seen the light.

Meanwhile, Mr. Jacobs hired former top federal law-enforcement officials to check for any connections the company might have with questionable characters. As a result, the company stopped dealing with some firms. "We've made absolutely certain that everyone is cleaner than Caesar's wife," says Edward F. Foley, a Delaware North consultant and former head of a major Federal Bureau of Investigation organized-crime unit in New York.

One casualty was the grand mucker "Emprise," which means a venture involving prowess or daring. Mr. Jacobs formed a new parent company in 1980 and, for a name, looked no further than the nearby intersection of Delaware and North streets in Buffalo.

Another casualty was brother Max, an executive vice president. State regulators expressed concern over having an undicted co-conspirator -- even one who proclaimed his innocence -- tied to the firm. In 1974, Max resigned and, like his other brothers and sisters, eventually sold his share in the company to Mr. Jacobs. Removing his brother "was very tough," but necessary, Mr. Jacobs insists. Max, he says, had become "excess baggage." Max Jacobs didn't return repeated phone calls for comment.

Of course, there was one tie to the past: Mr. Jacobs wasn't about to sever himself. Mr. Jacobs had been an officer and director and far more involved in the company than Max Jacobs ever was. Yet he insists he knew nothing of mobsters or criminal acts. He also defends his father's integrity. At the same time, he and other company officials note that, if there is blame to be allotted, it rests with the dead man. "Louis M. Jacobs alone was responsible for the transactions resulting in the conviction," says a 1984 company letter to Iowa regulators.

In a move he admits was spurred by all the negative publicity, Mr. Jacobs became more involved in the community and quickly emerged as a major philanthropist. "He and his family, also his 'brother,'" built political friendships, contributing to politicians ranging from former Rep. Jack Kemp, a conservative Buffalo Republican, to Bill Clinton, who since 1990 has received about \$20,000 from the Jacobs clan.

Last year, critics unsuccessfully challenging a Delaware North racing license in Wisconsin saw the extent of the company's connections. While there is no evidence that any official acted inappropriately, the critics note that two top Wisconsin gaming-commission officials had been employees of a senior Delaware North executive when the three worked in state government. One of the company's local law firms had former partners in senior positions in the administration of Gov. Tommy Thompson, who



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deposits the gaming commission and had to depose the hearing examiner in the case. The hearing examiner was the company's former chief of staff and a partner in a law firm that had previously done work for Delaware North.

Mr. Jacobs hasn't won even round. In 1984, for example, the New Jersey Racing Commission ruled that Mr. Jacobs knew or should have known of Empire's illegal activities and should have attempted to stop them. Delaware North withdrew a license application there.

In the early years of Mr. Jacobs's reign there were still questions about continuing mob involvement. It took the company years, even after the conviction, to sever ties with some questionable suppliers and business associates. For example, it wasn't until 1979, after the hiring of Mr. Foley, the ex-FBI agent, that a Detroit bread supplier with ties to a reputed mob family was dropped. A Delaware North spokesman blames such relationships on contractual commitments and the press of other business that didn't allow the company to focus on possibly questionable contacts.

Or consider the testimony of Gary Bowdach, a confessed Mafia hit man, arsonist, and federal protected witness.

In a 1950 deposition to Florida state regulators and subsequent testimony in a civil trial, Mr. Bowdach claimed that a 1974 fire at a Delaware North jai alai arena in Florida had been arranged by a mob boss in New England, supposedly in return for a cut of the insurance proceeds from Delaware North. Mr. Bowdach claimed he was offered the arson job by a mob associate but turned it down. General Electric Co. even used Mr. Bowdach as a witness to defend itself against a lawsuit in which Delaware North was claiming defective GE materials had contributed to the fire.

Delaware North denies Mr. Bowdach's allegations and says insurance payments didn't cover its losses from the blaze. The jury in the civil case absolved GE of any financial liability. According to Delaware North, the jury also found that the fire was intentionally caused but that Mr. Bowdach was innocent and not involved.

Then there is the case of Don Bolles, an investigative reporter for the Arizona Republic and a longtime critic of Empire's operations in Arizona. In 1976, Mr. Bolles was killed by a bomb under his car in Phoenix. According to local press reports, his last words included, "They finally got me. The Mafia. Empire."

Two men, neither of whom had any known ties to the company, were convicted in connection with the killing. But over the years, strange bits of evidence have surfaced in court proceedings arising from the killing. These include a Phoenix policeman's claim in a deposition that local authorities ordered the removal of information from a police file that might have linked Empire and others to one

of the killers. The company has denied any involvement and notes that official investigations have consistently cleared it of any role in the slaying.

Indeed, for well over a decade, no evidence has surfaced to suggest continuing relationships between mobsters and the company. So why are some regulators still uneasy?

In part, the concerns seem to stem from the widely held belief that once in the mob, always in the mob. At the same time, both the company and its owner are very private. That is a trait that, rightly or wrongly, may help breed distrust.

Causing raised eyebrows among some regulators, for instance, is the way Delaware North handles the tens of millions of dollars in cash generated annually from its wagering operations and food-and-drink sales. Each day, the operating units send their cash receipts to headquarters in Buffalo, which the company says is done simply to improve cash management. But it worries some officials in other states. "We need to know where the money in parimutuel operations goes and comes from. Here, we run into a black hole," says one state racing regulator, who adds that his agency doesn't have the authority to go through the financial records of Delaware North in New York.

Earlier this year, Mr. Jacobs faced a new potential embarrassment when Max Margulis, a veteran Delaware North official, was indicted in state court in Tampa, Fla., for his role in an alleged investment fraud in which the company isn't accused of having a role. A co-defendant was identified in the local Tampa press as the suspected head of the city's organized-crime family.

Mr. Margulis has pleaded not guilty and the case recently was dismissed when prosecutors refused to comply with a court order to be more specific in their charges. That dismissal is being appealed. Delaware North officials say they believe Mr. Margulis is innocent and have kept him on the payroll.

Yet the specter of the mob remains a seemingly eternal source of public-relations headaches. Earlier this year, Delaware North was looking to buy the New York Times Co. in a bid for Madison Square Garden. Its involvement prompted a New York Post story under the headline, "Mob-case firm joins Times in Garden bid." The story described Delaware North as a "controversial" company with "a history of ties to the mob," and erroneously reported that Mr. Jacobs had been one of the unindicted co-conspirators in the 1972 criminal case. After the company threatened to sue, the Post printed a correction and wrote a letter of apology to Mr. Jacobs.

The Times ultimately decided against proceeding with a joint offer. Both sides say the bad press about Delaware North had nothing to do with that decision.

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The past also included on what may be Mr. Jacobs's biggest triumph to date: Delaware North's selection last year as concessionaire for Yosemite. Numerous stories about the company's bid for the 15-year, \$1.5-billion contract mentioned the mob -- hardly the best advertisement for a firm seeking to run one of the nation's crown jewels. "In the past," asked the Fresno Daily Bee in 1994:

In this case, Mr. Jacobs's political connections helped the company. He had friends in the Bush administration. Mr. Kemp, who at the time was secretary of Housing and Urban Development, wrote a letter to the Interior Department praising Mr. Jacobs. "I suggested that he should be given every consideration," Mr. Kemp recalls.

Delaware North was tentatively selected. However, losing bidders and some in Congress questioned the fairness of the selection process. So the final decision was left to the incoming Clinton administration and Interior Secretary Bruce Babbitt.

As it happened, when Mr. Babbitt was attorney general and later governor of Arizona in the 1970s and early 1980s, he had helped work out arrangements allowing Delaware North to remain in the racetrack business there despite the 1972 conviction. Mr. Babbitt also initially headed the Bolles murder investigation that cleared Emprise. Over the years, the Jacobs family and its business arms have given thousands of dollars to Mr. Babbitt's campaigns. (Mr. Babbitt has consistently said those contributions never influenced his treatment of the company and noted that he has, at times, been a critic of the company.)

In June of last year, the Interior Department gave the green light to Delaware North's selection. Ultimately, the mob stigma "didn't make a difference," exults Mr. Jacobs. He says the firm now plans to go after other national-park contracts. Such an expansion could help offset the decline in the firm's troubled racetrack operations, which have been hurt by the spread of casino gambling.

Indeed, despite all the bad publicity, business is good. Under Mr. Jacobs's reign, Delaware North's annual revenue has risen more than 20-fold (it doesn't disclose earnings), and operations stretch from Australia to Hungary. Despite temporary banishments in the past, no state's doors are closed to Delaware North.

Though Lou Jacobs rarely allowed himself outside indulgences, his son hasn't let the family business eclipse other aspects of his life. He splits his time between a 225-acre estate in East Aunoy, N.Y., and a 200-acre home farm near Palm Beach, Fla. He has become a health enthusiast and an accomplished horseman. In 1992, when one of Jeremy Jacobs's daughters married the son of former American Express Co. Chairman James Robinson, Mr. Jacobs and his wife, Margaret, put on what one family

friend only half-jokingly calls the "wedding of the century" for more than 600 guests at the East Aunoy estate.

Now he is planning for his own succession. Two of Mr. Jacobs's three sons are executives at Delaware North and are being groomed to receive the torch. Says the oldest, 30-year-old Jeremy Jr.: "In our house, my father and grandfather are legends."

(See related letter: "Letters to the Editor: We've Been Scrutinized And Re-Scrutinized," Dec. 18, 1994.)

(See related letter: "Letters to the Editor: Expunged, Permanently," WSJ Dec. 20, 1994.)

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6/2/75 Sew McCain MATTER

(File) Christ: St. Louis [REDACTED]

McCain matter - St. Louis Trib - 4/1/75

3 Small Trilers supplied in / Brown and Affs
 + purchased a day truck +
 transport to Brown + day truck
 has much favorable through Brown
 because 1) Triler - in 4/5 color due
 as a number -

Trailer used by Delapere north of 1/4
 want in McCain to focus on that
 aspect of this application
 Other Trilers are appearing
 One client + other Trilers - all
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 from them)

Don't consider intake goal for Triler
 + inventory areas + Trilers -
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 at environmental impact, not
 economic impact

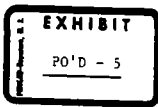
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 We want to see him because of

→ Character at Delapere Dist - possible
 major connection - in St. Louis Trib

First time of an such real evidence

at connection of such an
 event in Indian going

Decision for intense expected in few weeks



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FAX [REDACTED]

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PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

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DATE: 6/13/95

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COMMENTS:

*Lewis -
Mission accomplished!
Justin will be looking into
Delaware Mark and Hudson.
TZ*



O'CONNOR & HANNAN
M E M O R A N D U M

TO: Thomas Corcoran
FROM: Patrick O'Donnell (PO)
SUBJECT: Senator McCain
DATE: June 13, 1995

During the Williamsburg activities over the weekend, Senator McCain advised that he already sent the matter we discussed to the Justice Department. He was not troubled that we asked to end run staff.



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1227 MARION STREET
ST. PAUL, MN 55117

DATE : June 5, 1995
MEMO TO : Tribal Clients
MEMO FROM : Larry Kitto

REASON : HUDSON DOG TRACK ISSUE

Recent communications with the BIA lead us to believe that a decision about the fee-to-trust transfer of the Hudson Dog Track will be before the Secretary of Interior for a decision before the end of June. We are recommending the following strategies:

1. Have the Minnesota Congressional Delegation send a letter to Herold Ickes, President Clinton's Deputy Chief of Staff for Policy and Political Affairs requesting that the White House meet with elected tribal officials who are opposed to the transaction. THE LETTER HAS BEEN DRAFTED AND IS BEING CIRCULATED FOR SIGNATURES.
2. Have each of the Tribes who are opposed send a letter to Secretary Babbitt requesting a meeting before he makes a decision. THE LETTER HAS BEEN DRAFTED AND SENT TO THE TRIBES FOR SIGNATURE.
3. Ask Congressman George Miller, democrat from California and the ranking member of the House Natural Resources Committee to take an opposing position and meet with Secretary Babbitt. JERRY SIKORSKI WILL PURSUE THIS.
4. Ask Congressman Don Young, republican from Alaska to take an opposing position and express reasons for such opposition to Secretary Babbitt. TOM CORCORAN AND FRANK DUCHNEAUX WILL PURSUE THIS.
5. Arrange for Marge Anderson, Chairwoman of the Mille Lacs Lake reservation, Debbie Boxleitner, Chairwoman of the Oneida reservation, and Joanne Jones, Chairwoman of the Ho-Chunk reservation to meet with Senator Daniel Inouye, democrat of Hawaii and ranking member of the Senate Committee on Indians. JERRY SIKORSKI AND SCOTT DACY WILL PURSUE THIS.

6. Have Frank Duccneau, Tom Corcoran, and Pat O'Donnell meet with Senator John McCain, republican from Arizona and Chairman of the Senate Committee on Indians. THIS MEETING IS ALREADY ARRANGED.

7. Increase pressure and communications with the White House through Vice-President Gore's office, the National Democratic Committee and The Committee to re-elect the President. LARRY KITTO AND PAT O'CONNOR WILL PURSUE THIS.

8. Ask Congressman Sabo, Vento, Oberstar, and Senator Wellstone of Minnesota to have a Meeting with Secretary Babbitt. LARRY KITTO WILL PURSUE THIS.

9. Send a joint letter from the St. Croix, Oneida, and Ho-Chunk tribes to the Wisconsin delegations asking, once again, for support in opposing the transaction. LARRY KITTO AND TOM CORCORAN WILL PURSUE THIS.

10. Get Congressman Obey and Senator Faingold of Wisconsin and Congressman Vento of Minnesota to keep pressure on the Department of Interior and Secretary Babbitt. SCOTT DACY WILL PURSUE THIS.

11. Have Congressman Martin Sabo of Minnesota keep the pressure on the White House through Chief of Staff Leon Panetta. LARRY KITTO AND JERRY SIKORSKI WILL PURSUE THIS.

12. Get a story in the Washington Post about Delaware North and their relationship with the tracks in Wisconsin. TOM CORCORAN, LARRY KITTO, SCOTT DACY, AND JERRY SIKORSKI WILL PURSUE THIS.

13. Publicly expose the conflict of interest that Ada Deer, Assistant Secretary of the BIA and Gaiashkibos, President of NCAI have in relation to their ability to use their positions to work the process and influence the decision.

MEMO TO : TRIBAL CLIENTS
 MEMO FROM : LARRY KITTO & TOM CORCORAN
 DATE : 12 NOVEMBER 1995
 REASON : HUDSON DOG TRACK UPDATE

1. Federal officials have until the end of November 1995 to respond to the lawsuit filed by the Lac Courte Oreilles, Red Cliff and Sokaogon bands of Chippewa. It appears that the options they are considering include:

- Vigorous defense of the Secretary of Interior's right to make such decisions
- Giving the issue limited attention and put up a lukewarm defense
- Suggest that the issue be sent back to the Interior Department for review

2. We have been informed that the U.S. Attorney's office in Madison, WI, is considering a request that they be allowed to argue the case there, rather than it being argued by attorneys from the Justice Department in Washington, D.C. She may also suggest that the Department of Interior review the issue again.

3. The case is further complicated by the fact that the three Tribes filing the lawsuit have hired large, well-connected law firms to represent them. One of these firms has contributed heavily to the U.S. Attorney in Madison when she ran for public office.

4. The Indian Rights office within the Justice Department, indicated that

- This is not an issue that the Secretary of Interior will want to address



page 2

However, there may be some reluctance in the Indian Rights Office to become involved because this is a case of one group of Tribes vs. another group of Tribes.

5. For the Minnesota and Wisconsin Tribes who were against turning the Hudson Dog Track into a casino, it is in their best interest to see that

- The case is defended vigorously by lawyers from the Department of Justice in Washington, D.C. who are experienced and learned in Indian law.
- That this case not be sent back to the Department of Interior for review and reconsideration.

✓ 6. As we know, this issue became very political and neither the White House or those in Congress who supported us, will want this issue to come up again during the 1996 election year.

✓ 7. We have begun to make contacts with the Congress, the Administration and the White House to alert them about our concerns. Additionally, we suggest that Tribal attorneys, on behalf of their clients, contact the Department of Justice and the Department of Interior to:

- Find out the status of the situation
- Ask that the case be handled by Department of Justice lawyers
- Convey that you do not want the case returned to the Secretary of the Interior for a second review.

8. Finally, if and when this case goes to court, Tribes need to decide how they will support the Government and the defense of the prior ruling.

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INVOICE

August 9, 1995 32594-0001
Adson Project - Nature of Matter: Dog Track to

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Discussions with L. Kitto; discussions with aides to Senate Committee on Indian Affairs regarding timing and policy issues relative to mark up of Senate bill for S. 487; discussions regarding S. 487 with aides to Senators Coverdell, Thomas and Hatch; discussion with K. Larry Kitto regarding arranging meeting in Washington, D.C. with senators; discussion regarding status of work up on Indian legislation.

Discussion with Larry Kitto, review of reports on July 25 hearing regarding S487 memoranda to Lewis Taylor, call to Lewis Taylor, additional memoranda to Lewis Taylor, discussion with aids to Senate Indian Affairs Committee, discussions with aids to Sen. Coverdell, Sen. Thomas, Sen. Hatch and Sen. Nickles; meeting with Tom Corcoran and call Senator McCain for appointment with Lewis Taylor, Chairman of St. Croix Tribe of Wisconsin, on S. 487, hopefully prior to scheduled markup. Receive word that he will try to accommodate during week of July 31.

Discussion with T. Corcoran regarding need to set up appointment with Senators Conrad, Dorgan, and Inouye; prepare correspondence regarding same; telephone conferences making appointments; discussions with Larry Kitto, discussions with Pat O'Connor, discussions with Pat O'Donnell, discussions with aids to Senate Indian Affairs Committee, discussion with legislative aid to Sen. Mikulski, discussion with legislative aids to Sen. Domenici, Sen. Kassebaum, Sen. Thomas, Sen. Coverdell, Sen. Hatch, Sen. Nickles, and Sen. Dorgan, follow up discussions to arrange meeting for client on August 3 at 3:00 p.m. Ryan Leonard aid to Sen. Nickles, follow up discussion with Rob Foreman aid to Sen. Hatch for meeting on August 3 at 3:00 p.m.

Calls to Corcoran and Kitto working on appointment in Washington with U.S. Senators; faxes to Senators Conrad, Dorgan and Inouye; discussion with Larry Kitto, discussions with Larry Kitto and Lewis Taylor regarding the development of the Congressional meeting schedule for Monday, July 31 and discussion with legislative aids to



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tember 14, 1995
ian Gaming Regulatory Act

32594-0002

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discussions with L. Kitto; discussions with P. O'Connor; meeting with tribal leaders; meeting with tribal leaders and Rob Foreman, legislative aide to Senator Hatch; memorandum to file regarding position of Senator Hatch on S. 487; strategy discussions with tribal leaders; meeting with tribal leaders and Ryan Leonard, legislative aide to Senator Nickles; memorandum to file regarding position of Senator Nickles on S. 487; discussions with tribal leaders regarding the meetings with Senator Dorgan, Senator Inouye and Senator McCain.

Discussions with L. Kitto, discussions with P. O'Donnell regarding meeting with Senator McCain; discussions with James Symington and L. Kitto regarding meeting with Senator Dan Akaka; arrange and accompany delegation of three Indian tribal chiefs to Senator McCain's office and discussions concerning development of the new bill amending the Indian Gaming Reform Act and report back to Tom Corcoran on the positive reaction of Senator McCain on same; discussion with Tom Corcoran regarding Senator Inouye meeting; Work-up.

Long distance discussions with Larry Kitto getting briefing on Senator Inouye meeting and details of letters to Senators Inouye, Conrad and Dorgan.

Long distance to Tom Corcoran reporting on Senator Inouye meeting with clients on Thursday, August 3, 1995; Arranging for letters to go to Senators Inouye, Conrad and Dorgan; memorandum to file regarding Senator Akaka; memorandum to file regarding Senators Akaka, Inouye and McCain; discussions with R. Leonard, legislative aide to Senator Kassebaum; discussions with L. Kitto; discussions with Frank Ducheneaux; discussions with aide to Senator Coverdell; discussions with P. O'Connor; review memorandum from L. Kitto; discussions with Executive Director of Senate GOP Conference Thad Cochran; discussions with legislative aide to Senator Cochran and report to L. Kitto regarding meeting scheduled for 2:30 on August 8.

AA 0000286

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September 14, 1995

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St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

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Indian Gaming Regulatory Act

Professional services rendered through August 31, 1995

Discussions with P. O'Donnell regarding meeting scheduled with Senator McCain, Chairman of the Senate Committee on Indian Affairs, set for Friday, August 4; discussions with Lewis Taylor and his representatives regarding the addition to the Congressional meeting schedule for this week; discussions with L. Kitto; discussions with aides to Senators Murkowski, Kassebaum, Thomas and Coverdell; discussions with L. Kitto; preparation of schedule IGRA meetings in Washington this week for client; preparing for meeting with Senator Conrad on Wednesday and Thursday; Call to Senator Conrad's appointment secretary; Reviewing bill and discussion regarding possible amendments; Trip to Washington. Discussion with Larry Kitto; Indian matter regarding racetrack gaming and the Hudson dog track. Telephone discussion and meeting with senior White House staff and POTUS re expansion of gaming and the dog track and opposition to so doing.

Meeting with Tom Corcoran to prepare for gathering of Minnesota and Wisconsin tribes with Senator McCain to discuss support for the National Indian Gaming Regulatory legislation; discussions with P. O'Connor; discussions with L. Kitto; discussions with aides to Senators Kassebaum, Thomas, Domenici, Murkowski, Coverdell, Dorgan and Conrad; review memorandum from L. Kitto; meeting with Lewis Taylor for dinner and discussion purposes; call to Senator Dorgan's office; Discussion with T. Corcoran regarding Slate Gordon Amendment; Discussion with Larry Kitto regarding who will speak at the Senator Conrad meeting; Read L. Kitto memorandum on the Indian Gaming legislation trip to the Hill meeting with Senator Conrad; Strategy discussion at dinner with clients. Meeting with Larry Kitto reviewing gaming bill and amendments; Discussion regarding amendments clients oppose; Discussion regarding Skip Humphrey amendments; Calls from Senator Dorgan's office and Senator Inouye's office changing time of appointments; Meeting with Senator Dorgan and clients; Meeting with Senator Inouye and clients;

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December 13, 1995

12594-0002

St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

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Indian Gaming Regulatory Act

Professional services rendered through November 30, 1995

Discussions with L. Kitto; discussions with Judy Shapiro of Strauss Hobbs; discussions with legislative aide to Speaker Gingrich; meeting with L. Kitto and Audrey Kohnen; discussions with legislative aide to Congressman Ramstad; memorandum to file for L. Kitto.
Discussions with L. Kitto; meeting with John McCollum, legislative aide for taxes and budget matters for Speaker Gingrich; discussions with Judy Shapiro, Jenny Boland and L. Kitto and Audrey Kohnen regarding meeting with the Speaker's aides; discussions with L. Kitto and Audrey Kohnen; review file; memorandum to L. Kitto regarding reports on casinos' promotion of economic development in small towns within the State of Minnesota; meeting with L. Kitto, Audrey Kohnen and Congressman Gil Gutmacht and his staff.
Discussions with Audrey Kohnen; discussions with L. Kitto; discussions with Tim Glidden, Counsel to the House Resources Subcommittee on Native Americans; discussions with legislative aide to Senator McCain; discussions with legislative aide to Congressman J.D. Hayworth.
Discussions with L. Kitto; discussions with aides to Speaker Gingrich; discussions with Frank Ducheneaux; memorandum to Frank Ducheneaux; discussions with Dan Meyer, Chief of Staff for Speaker Gingrich.
Discussions with L. Kitto; meeting with L. Kitto, Lewis Taylor and Frank Ducheneaux; meeting with P. O'Donnell regarding Senator Dole; discussions with L. Kitto; discussions with P. O'Donnell regarding 11:00 a.m. November 9 meeting with legislative aide to Senator Dole; discussions with Don Meyer, Chief of Staff for Speaker Gingrich; report to L. Kitto on meeting scheduled for November 9 with David Wilson, legislative aide to Senator Dole; call to Senator Dole's Administrative Assistant Dave Wilson at Tom Corcoran's request to schedule meeting for November 8 or 9 with tribal leadership to discuss Indian gaming tax issue in the Senate Finance Committee and

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December 13, 1995
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	Photocopies	4.40
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11/ /95	Tom Corcoran - out of pocket expenses	5.00
11/30/95	PATRICK E. O'DONNELL - OUT OF POCKET EXPENSES	4.50
12/12/95	LARRY KITTO - Expenses for October and November, 1995, including travel, lodging and meals	1962.00
	Total Disbursements:	\$1,985.83
	Total Services and Disbursements:	\$9,485.83

AA 0000306

[The deposition of Michael T. Schmidt follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: MICHAEL T. SCHMIDT

THURSDAY, JANUARY 8, 1998

The deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 10:10 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Robert Dold, Investigative Counsel; James C. Wilson, Senior Investigative Counsel; Michael Yang, Minority Counsel; and Michael J. Raphael, Minority Counsel.

For MICHAEL T. SCHMIDT:

DAVID WILSON, ESQ.
Hale & Dorr
1455 Pennsylvania Avenue, N.W.
Washington, D.C.

Mr. DOLD. Good morning, Mr. Schmidt. On behalf of the Members of the Committee on Government Reform and Oversight. I appreciate and thank you for appearing here today.

This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and a notary public. I will now request that the reporter place you under oath.

THEREUPON, MICHAEL T. SCHMIDT, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. DOLD. I would like to note for the record those who are present at the beginning of this deposition. I am Bob Dold, the designated majority counsel. I'm accompanied today by Jim Wilson, who is also majority counsel. Michael Yang is the designated minority counsel, and he's accompanied today by Michael Raphael. And Mr. Schmidt is represented today by David Wilson.

Although this proceeding is being held in a somewhat informal atmosphere, because you've been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a court of law.

If I ask you about conversations you have had in the past and you are unable to recall the exact words used in the conversation, you may state that you are unable to recall the exact words and then give me the gist or substance of any such conversation, to the best of your recollection. If you recall only part of a conversation or only part of an event, please give me your best recollection of those events or parts of the conversation that you recall.

If I ask you whether you have any information upon a particular subject, and you have overheard other persons conversing with others regarding it or seen correspondence or documentation regarding it, please tell me that you do have such information and indicate the source, either a conversation, document, or otherwise.

The WITNESS. Okay.

Mr. DOLD. Majority and minority committee counsels will ask you questions regarding the subject matter of the investigation. Minority counsel will ask questions after the majority counsel is finished. If, however, there is a question that is of moment at the time, by all means, Michael, jump in at that point in time. That's perfectly allowable.

Members of Congress who wish to ask questions, if they should attend, will be afforded an immediate opportunity to ask their questions. And when they are finished, committee counsel will resume questioning where they left off.

Pursuant to the committee rules, you're allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the depositions shall be stated for the record. If the witness is instructed not to answer the question or refuses to answer the question, majority and minority counsel will confer to determine whether the objection is proper.

The WITNESS. Okay.

Mr. DOLD. This deposition is considered as taken in executive session of the committee, which means it may not be made public without the consent of the committee, pursuant to Clause 2(k)(7) of House Rule XI. You are asked to abide by the rules of the House and not discuss with anyone this deposition and the issues raised during this proceeding.

Finally, no later than 5 days after your testimony has been transcribed and you have been notified that your transcript is available, you may submit suggested changes to the Chairman. Normally what's happened with previous depositions is they're usually available pretty early, a day or two. And what will happen is, because of the distance, which you're aware, we will send the deposition to Mr. Wilson.

The WITNESS. Okay.

Mr. DOLD. And then he can forward it on to you and then send it back to the committee, if that's all right.

Committee staff may make any typographical and technical changes requested by you. Substantive changes, modifications and clarifications or amendments to the deposition transcript submitted by you must be accompanied by a letter requesting the changes and the statement of your reasons for each proposed change. A letter requesting any substantive change must be signed by you. Any substantive changes shall be included as an appendix to the transcript conditioned upon your signing of the transcript.

Do you understand what we've gone over so far?

The WITNESS. Uh-huh.

Mr. DOLD. Do you have any questions about any of the matters we've gone over?

The WITNESS. No.

Mr. DOLD. If you don't understand a question, please say so, and I will repeat it or rephrase it so that you understand the question. Do you understand that you should tell me if you don't understand?

The WITNESS. Uh-huh. Yes.

Mr. DOLD. The reporter will be taking down everything we say and will make a written record of the deposition. You must give verbal, audible answers because the reporter cannot record what a nod of the head or a gesture means.

The WITNESS. Okay.

Mr. DOLD. If you can't hear me, please say so, and I will repeat the question or have the court reporter read the question to you. Please wait until I finish each question before answering, and I will do the same, so that the court reporter can make a clear record.

Your testimony is being taken under oath, as if we were in court, and if you answer a question, it will be assumed that you understood the question and the answer was intended to be responsive to it. Do you understand that?

The WITNESS. Yes.

Mr. DOLD. I understand that you're here voluntarily today, and I thank you for that. Do you have any questions about this deposition before we begin the substantive portion of it?

The WITNESS. No. It seems clear so far.

Mr. DOLD. This would be an appropriate time if you have any statements.

Mr. WILSON. I don't have a statement to make.

Mr. YANG. Just two quick points to make. Just first on behalf of the minority, thank you for coming. Second, I would just like to note the minority's continuing objection to the Hudson matters, just insofar as they've already been covered by the Senate Governmental Affairs Committee and are the subject of ongoing litigation in District Court in Wisconsin.

EXAMINATION BY MR. DOLD:

Question. Mr. Schmidt, will you please spell your name for the record?

Answer. Yes. It's Michael Thomas Schmidt. That's M-I-C-H-A-E-L, T-H-O-M-A-S, S-C-H-M-I-D-T.

Question. And did you attend college?

Answer. Yes.

Question. Where did you attend college?

Answer. Undergraduate, the University of Michigan; graduate, University of Maryland.

Question. And what did you get your graduate degree in?

Answer. Public management.

Question. Can you give me a brief employment history from college to date? When I say brief, just fairly briefly.

Answer. I worked, after graduate school, with the Office of Personnel Management here in Washington, D.C. I was a presidential management intern, which is a 2-year postgraduate internship in the civil service.

Question. When was that?

Answer. 1991, summer 1991 to summer of 1993. After that, I was a detail, detailee to the White House for a year. So that would be summer '93 to summer of '94. And then I became a political appointee in the White House from 1994 to '96, summer 1996. And I presently work at Ford Motor Company, from 1996 summer till today.

Question. And what role did you have in the White House when you were there? What were your specific duties when you were at the White House?

Answer. Do you mean where I worked and—

Question. Where you worked and what your job entailed? What specific duties you had in your job?

Mr. YANG. Do you mean when he was a detailee or appointee?

Mr. DOLD. I would like both if we could get it.

The WITNESS. Actually both were not too—not too different. I worked for the Domestic Policy Council. I was a policy analyst. I—my specialty—my focus was on education and training policy.

EXAMINATION BY MR. DOLD:

Question. Did you do anything else besides that?

Answer. Other issues.

Question. Other issues besides education?

Answer. Yeah. Casual issues, as they would come up, I would handle.

Question. Have you discussed this deposition with anyone—

Answer. No.

Question [continuing]. Other than your attorney?

Answer. Other than my attorney, no.

Question. Have you given documents regarding the Hudson Dog Track to the Department of Justice?

Answer. No, not to my knowledge.

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. No. Someone from the FBI called me but not from—I'm not sure if that's the same or not.

Question. Now, when I say the Hudson Dog Track matter, just for the record's sake, it's referring to the fee-to-trust application by three Indian tribes in Wisconsin and the matters surrounding it.

Answer. Okay.

Question. When you say you were contacted by the FBI, who at the FBI contacted you?

Answer. [Redacted].

Question. And do you know when that contact came?

Answer. October, November of this year, maybe November of 1997.

Question. Do you have any documents pertaining to the Hudson Dog Track in your personal possession?

Answer. No, not to my knowledge.

Question. Did you ever have documents pertaining to the Hudson Dog Track matter in your personal possession?

Answer. Could you go into more detail about personal possession?

Question. Sure. Something that would be outside of the office.

Mr. WILSON. You mean after he left the White House—

The WITNESS. Right.

Mr. WILSON [continuing]. Did he retain any documents? Is that your question?

Mr. DOLD. Yes.

The WITNESS. No, not to my knowledge.

EXAMINATION BY MR. DOLD:

Question. In your capacity at the White House, did you ever deal with any Indian gaming issues?

Answer. Only when they, as "they" referred to the Indian Gaming Regulatory Act which was here on the Hill, that was the only gaming issues that I worked on.

Question. Did you in your capacity at the White House deal with anyone at the Department of Interior while you were dealing with the Indian gaming issues?

Mr. WILSON. You mean in the context of working on the Indian Gaming Regulatory Act?

The WITNESS. That's what——

Mr. DOLD. Correct.

Mr. WILSON. Did he work with anyone at the Department of Interior?

Mr. DOLD. Right.

The WITNESS. As it pertains to the Indian Gaming Regulatory Act, I did work with folks at the Interior Department.

EXAMINATION BY MR. DOLD:

Question. Who did you work with at Interior?

Answer. On IGRA, mostly John Duffy. That was the major contact that I can recall. There were other folks but not that are coming to mind.

Question. How often would you talk with Mr. Duffy, on a weekly scale?

Mr. WILSON. You mean with respect to the Indian Gaming Regulatory Act or generally or——

EXAMINATION BY MR. DOLD:

Question. Would you talk to Mr. Duffy on issues besides the Indian Gaming Regulatory Act?

Answer. No.

Question. Okay.

Answer. Not to my recollection.

Question. So that's the main issue you were dealing with Mr. Duffy on. How often would you talk to Mr. Duffy, then, considering it would be just on the Indian Gaming Regulatory Act?

Answer. Not even weekly. It's difficult to qualify. It would be when testimony is coming up or when the issue—there was a hearing coming up, then I would meet with him.

Question. Mr. Schmidt, when did you first hear about the Hudson Dog Track? When did you first become aware of it?

Answer. Of the issue that we're——

Question. Yes.

Answer. I guess it was, as far as I can remember, probably a phone call that I was on with a lobbyist from the—from the Hudson—involved in the Hudson case.

Question. Do you recall who it was?

Answer. His name is Patrick O'Connor.

Question. Do you recall when that was?

Answer. No. Not—not—not specifically.

Question. How about a general time frame? I'm not trying to hide the ball. I think we've got documentations on it.

Answer. Something in 1995 is my recollection.

[Schmidt Deposition Exhibit No. MS-1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

EXAMINATION BY MR. DOLD:

Question. I'm showing Mr. Schmidt what has been marked as MS-1, a memorandum for Harold Ickes from Loretta Avent. I recognize, and for the record, that your name does not appear on here, but I was wanting to know if you have ever seen this memorandum before?

Mr. WILSON. Take whatever time you need.

The WITNESS. If I can.

EXAMINATION BY MR. DOLD:

Question. Yeah. Please take whatever time you need to review the document.

Answer. Okay.

Question. Have you ever seen that document before?

Answer. Not that I remember.

Question. Do you know Ms. Avent?

Answer. Yes.

Question. Did she ever talk to you about the substance of this memo?

Mr. WILSON. You mean about the memo itself or about the issues?

Mr. DOLD. About the issues, about the substance in this memo, the substance of the memo, about getting a call from Bruce.

Mr. WILSON. I mean, there are so many different issues in here.

The WITNESS. Yeah.

Mr. WILSON. Can you—

The WITNESS. Can we break them out?

Mr. WILSON. If you can specify what issue you're talking about.

Mr. DOLD. Not a problem.

EXAMINATION BY MR. DOLD:

Question. The letter just starts, "I just got a call from Bruce in reference to a person named Pat O'Connor."

Do you know who Bruce is? I think—I can submit to you it's Bruce Lindsey.

Answer. Okay.

Question. I have a notation on that, and I'll show you that in a minute. "Who has called me on numerous occasions."

Were you aware Mr. O'Connor was calling Ms. Avent or calling Ms. Avent on several occasions?

Answer. I believe Mr. O'Connor was calling Ms. Avent. I believe that in a conversation Ms. Avent, I don't remember specifically but I remember generally, telling me that Mr. O'Connor had called her a number of times, yes.

Question. Do you know the reason why he was calling her? Did she ever express that to you? Do you have any knowledge as to why he was calling her?

Answer. At the time, it was because he had a question about an Indian gaming issue. I seem to remember that was the general gist of what she said. That's why he was calling her.

He wanted to talk to her.

Question. Do you have any idea what specific gaming issue he was calling about?

Answer. No—yeah. It's—

Mr. YANG. Are you asking about Ms. Avent's conversation?

The WITNESS. Right. That's why I'm getting confused.

Mr. WILSON. Are you asking about his knowledge now or what Loretta said to him?

EXAMINATION BY MR. DOLD:

Question. Right. I want to go back to your personal knowledge at that time.

Answer. Okay.

Question. At that time, did you have any idea why Mr. O'Connor was calling her? And you said it was because of an Indian gaming—

Answer. Issue.

Question. Okay. Do you recall what the specific gaming issue was?

Answer. I don't remember if I specifically had knowledge about the issue. I think generally I knew it was a gaming issue in Wisconsin that had to do with a tribe that wanted to open a casino. That was probably about as deep, as best I remember, as my knowledge probably went at that point.

[Schmidt Deposition Exhibit No. MS-2 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Schmidt what has been marked as MS-2, which I think coincides with the first exhibit, and it might be a little bit easier for you to kind of refer to that and help us out. So take some time to—

Answer. Thank you.

Question [continuing]. Read that.

Do you know why this memo was sent to Ms. Mills?

Answer. I should say right straight up that I—I don't—I don't remember—particularly remember writing this memo. In fact, it's interesting, as I saw it come up in the press, I didn't even remember writing it. So I don't know what specifically was going through my mind sending it. Would you like to know generally why?

Question. Sure.

Answer. I just want to make sure I'm answering. From reading this—

Question. Uh-huh.

Answer. I would assume that part of my job was to, if there was an issue that looked like it was something that should be raised to a higher level, part of my job was to raise it. So just kind of inferring from what I'm reading and, you know, my general job, I—I likely was just raising it looks like a difficult issue to the White House counsel, because it did have some legal, regulatory implications.

Question. And what regulatory implications?

Answer. I thought I read somewhere here. I thought I read that. Well, generally, a decision to open a casino, my understanding is that there is a regulatory issue taken on by the Department of Interior.

Mr. YANG. I think in paragraph two.

The WITNESS. That's what I thought.

Mr. YANG. "Will need Secretary Babbitt's approval to go forward."

The WITNESS. Thank you. So I'm trying, reading this, trying to piece together most likely what my mind-set was at the time.

EXAMINATION BY MR. DOLD:

Question. Why would you raise this with the White House counsel and not push it off to Mr. Duffy at Interior? I mean, he's the counsel at Interior, right?

Answer. Yes. I would not typically have that kind of contact with Mr. Duffy.

Mr. YANG. I just want to note for the record, also, I think Mr. Duffy is counsel to the Secretary but doesn't work in the counsel's office at Interior, if I'm not mistaken.

The WITNESS. I believe that's correct.

EXAMINATION BY MR. DOLD:

Question. Do you know why this issue was raised with the White House counsel, then? I mean—

Answer. Why I did?

Question. Yeah. Why would you raise this with the White House counsel's office?

Answer. Again, I can't specifically remember what was going through my head at the time or even writing the memo. But if I can kind of piece together and assume, probably just that it was a regulatory issue and that that seemed like the right place to go to just raise the issue FYI.

Question. Does the White House counsel's office deal with all regulatory issues that the White House deals with?

Answer. I'm not sure. I—I'm not—didn't work in the counsel's office. I don't believe so.

Question. I'm just kind of curious as to what role do you think the White House counsel's office would play in this issue?

Answer. At the time, given the memo? I'm—

Question. Your personal understanding.

Answer. My best understanding—

Question. Now, today's date, back then, any time. What role do you think the White House counsel would play in this issue or could play in this issue?

Mr. WILSON. Wait, wait, wait. Would play, could play. You mean what would the White House counsel's office be permitted to do? What might it have done? I'm having a hard time understanding where you're going.

EXAMINATION BY MR. DOLD:

Question. Mr. Schmidt, what was your understanding of what the White House counsel's office could do in regard to this matter?

Answer. This specific matter?

Mr. DOLD. This specific.

Mr. WILSON. You mean, what it's permitted to do?

Mr. DOLD. That's fine.

EXAMINATION BY MR. DOLD:

Question. What is it permitted to do, in your understanding?

Answer. I don't believe I had—but—I don't believe I had any specific understanding of what specifically they could do in this matter. From reading this and just kind of thinking back, my—I could guess that probably I just thought that was the right place to raise the issue, just kind of as an FYI that this had taken place. I'm just kind of making a speculation. But that would be logical and consistent with what I'm reading here in this issue.

Question. Can you tell us why you were involved in the call to Mr. O'Connor?

Answer. Loretta and I often would get on calls to talk to lobbyists together, or to folks or to tribal leaders or anyone else, because we tried to not let a person be able to play one of us against the other; so someone wouldn't call her and get rejected and then call me and say, oh, Loretta Avent, just as an example, told me I should call you. So to minimize that, we often would get on a call together, especially on an issue where, you know, our answer was pretty unified.

Question. How did you know Mr. O'Connor was a fund-raiser? I know you know he was a lobbyist, but down in your e-mail, it says, "This e-mail is to fill you in more detail about a call that Loretta and I were on with a Lobbyist/Fundraiser named Pat O'Connor." Did he make it clear to you that he was a fund-raiser for the Democratic Party or—

Answer. My—not specifically that I remember. My recollection was—is that on the call he said he was a DNC trustee. I kind of remember him raising that issue and talking to us. I think I probably, you know, if I had to guess, inferred that meant he was a fund-raiser. That might not be accurate, but that's probably why I put the slash in.

Question. Okay. Why did Carol Rasco—

Answer. Uh-huh.

Question [continuing]. Get cc'd on this memo? Can you tell me what her role was at the time in the White House?

Answer. Carol Rasco was the Assistant to the President for Domestic Policy. She was my boss basically at the Domestic Policy Council. So just as a matter of, I guess, procedure, I cc'd my boss on a memo that I sent to the White House counsel. That would be my—that would be pretty standard procedure.

Question. Did you ever meet with anyone regarding the Hudson Dog Track matter?

Answer. Not that I remember. No.

Question. Any tribal leaders, anything like that?

Answer. On the Hudson gaming—

Question. On the Hudson?

Answer. No. Not that I remember.

Mr. YANG. And that would be excluding the discussion with Ms. Avent about the issue.

The WITNESS. Thank you.

EXAMINATION BY MR. DOLD:

Question. Just talking about tribal leaders. So, yeah, by all means, excluding Ms. Avent?

Answer. And excluding the call from Mr. O'Connor.

Question. Mr. O'Connor, yes.

Who else in the White House did you talk with or receive communications from regarding the Hudson Dog Track besides Ms. Avent, and I will assume besides Katharine Button?

Answer. Uh-huh.

Question. Did you receive any other information or talk to any other people or receive communications from anybody else at the White House?

Mr. YANG. Can we take that one step at a time?

The WITNESS. Okay.

EXAMINATION BY MR. DOLD:

Question. How about just receive communications. We can probably cut right to the chase?

Answer. Aside from Ms. Avent?

Question. Aside from Ms. Avent and Ms. Button.

Answer. Not that I remember, no.

Question. Your e-mail mentions Pat sent in a memo from him—not from the tribal leaders, as requested—to Loretta, asking to talk to her about intervening with Secretary Babbitt to allow the Hudson project to be able to do off-reservation gaming. Do you know if this document was ever produced to the committee or if you ever had seen that document?

Answer. Yeah. Not that I remember. And I don't remember seeing—I don't remember seeing that memo, no.

Mr. YANG. I'm sorry. There's two questions. Whether it was produced to the committee; which, would you know?

The WITNESS. I wouldn't have any idea. No, not that I would know.

EXAMINATION BY MR. DOLD:

Question. Did you ever receive that memo?

Answer. Did I receive the memo referenced here?

Question. Yes.

Answer. Not that I recall.

Question. If I can direct your attention to the second page—

Answer. Okay.

Question [continuing]. The memo states down—"According to Loretta:"

Answer. Okay.

Question. "The first mistake Pat O'Connor is making is trying to tie the President into an issue that he cannot be tied into for legal and political reasons."

Answer. Uh-huh.

Question. Do you have any idea what you're referring to as far as legal reasons or political reasons?

Answer. Again, I don't remember specifically what was going through my head or in writing this memo. But if you want me to ascertain from—

Question. Do you know why—

Mr. YANG. He should give us our best recollection.

The WITNESS. That's what you're looking for?

EXAMINATION BY MR. DOLD:

Question. Yes.

Answer. My best recollection would be, for legal, is that it was my understanding is that an off-reservation gaming request is a regulatory issue.

Question. And who handles those? So the President couldn't be tied in there for that legal reason? Who—is that what you're saying? The President couldn't be tied into it because it's a regulatory issue?

Answer. You know, I—I don't know if I was making that clear link. I think I was probably just reflecting the fact that a regulatory issue, my understanding, generally that's handled by the agency, it's not by the White House. I'm kind of recollecting that the best I can.

Question. How about political reasons?

Answer. My best guess as to what I was talking about there is that any kind of gaming issue was a hot potato in Indian country. The issue itself was very hot. So probably we didn't want to get involved in a fight about a gaming issue within Indian country. Politically, that just wasn't something I thought was a good idea.

If—

Mr. WILSON. I just also would note for the record that this paragraph we're referring to appears below a line that says, "According to Loretta:"

The WITNESS. Yeah.

Mr. WILSON. And so to ask the witness what he meant by something that, from the context of the memo, appears to be coming from Loretta and the witness is saying he has no independent recollection of even writing this, I think is a little unfair to suggest that he can say what he meant by legal and political reasons, given that it's apparently Loretta saying something for legal and political reasons.

The WITNESS. That's—that's correct. Thank you.

EXAMINATION BY MR. DOLD:

Question. Yeah, and I recognize that.

And having said that, Loretta has got people underneath her that would be obviously wanting to dictate a memo and stuff like that. So obviously by Mr. Schmidt typing this out, they must have discussed it in some form or fashion.

Mr. WILSON. Well, you're assuming something that may not be fair to assume.

EXAMINATION BY MR. DOLD:

Question. Okay. Would you, Mr. Schmidt, ever type a memo like this or an e-mail to Ms. Mills? I mean, you do admit that you would have done something like this? Would this be your memo?

The WITNESS. Are you asking—

Mr. YANG. Are you asking if he wrote this memo?

EXAMINATION BY MR. DOLD:

Question. Yes.

Did you ever write a memo? Do you ever recall ever writing memos, a memo concerning the Hudson Dog Track matter? Let's just leave it at that.

Answer. I don't remember writing this specific memo to be honest, but I have no reason to believe it's not from me. It looks pretty clearly like it is.

Question. When you say "according to Loretta," did you talk to Ms. Avent about the fact that this was something the President could not get tied into for legal and political reasons, that you recall?

Answer. No, I don't recall the conversation.

Question. Okay.

Mr. YANG. I would also just like to note for the record that the first paragraph of the memo says, quote: "It was half-dictated to me by Loretta via phone, so I apologize in advance if it is unwieldy at times."

It's further evidence that some of the content of this memo may have just been some sort of relay of what Loretta Avent may have told Mr. Schmidt. But I don't want to speculate on the record but I want to note that for the record.

EXAMINATION BY MR. DOLD:

Question. So do you have any idea what was meant in—under the section saying, “According to Loretta,” paragraph three—

Answer. Okay.

Question [continuing]. That it would be political poison?

Answer. I don’t—I don’t know why I used that or why that terminology was used at the time.

Question. Directing your attention back to the first exhibit—

Answer. Okay.

Question [continuing]. It is cc’d to Maggie Williams and Cheryl Mills.

Answer. Okay.

Question. Do you have any knowledge as to why Ms. Avent would have included Maggie Williams in this?

Answer. No. No. I don’t.

[Schmidt Deposition Exhibit No. MS-3 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Mr. Schmidt has been given a document which has been marked MS-3, which is a letter to Mr. Ickes from Patrick O’Connor.

Answer. Okay.

Question. Again, I will note for the record that Mr. Schmidt’s name does not appear on any of the cc lines—

Answer. Okay.

Question [continuing]. Or anywhere else in the memo. And you can read it if you would like. It’s really more specifically—I have most specific questions per se about the substance of the memo.

Mr. YANG. Mr. Schmidt, have you ever seen this letter before?

The WITNESS. Not to my knowledge, no. I don’t remember.

EXAMINATION BY MR. DOLD:

Question. Mr. Schmidt, my first question has already been asked and answered. But secondly, did Mr. Ickes ever contact you, concerned that you were doing Indian gaming policy, about getting information about the Hudson Dog Track or a proposal pending at Interior?

Answer. Not that I remember. No.

Question. The second page of the memo goes into some detail on some politics.

Answer. Okay.

Question. Did anybody ever—anybody at the White House ever talk to you about the politics involved of the tribes, the applicant tribes, the opposing tribes, any politics involved with the matter?

Mr. YANG. I’m sorry, any politics involved in the matter—

Mr. DOLD. I mean any personal politics, meaning that Governor Thompson would be Republican or that Senator D’Amato might be involved as being a Republican. Those are the types of issues I’m saying.

Mr. WILSON. You mean other than what he’s already talked about with respect to his conversations with Loretta and what’s in that memo?

EXAMINATION BY MR. DOLD:

Question. No. No, Loretta—anybody with—whether it be Loretta Avent or Ms. Button or whomever. Did anybody talk about the actual political beliefs of the people involved and the application at Hudson?

Answer. If you mean the ones specifically laid out here in this memo, I don’t recall ever talking about any of the issues here, the 1 through 5. I assume that’s what you’re—I don’t remember that kind of conversation happening.

Question. Do you ever recall knowing or talking about the fact that the opponents to the application were Democratic supporters?

Answer. I don’t remember ever talking about that, no.

Question. Do you recall, in the brief span that this was on your radar screen, what tribes were opposed to the Hudson Dog Track?

Answer. No. You know, I can’t even—even reading it in the paper, I don’t remember the sides.

[Schmidt Deposition Exhibit No. MS-4 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Mr. Schmidt has been given what has been marked MS-4. It is a memorandum for Cheryl Mills. And it’s cc’d to Harold Ickes, Maggie Williams, Bruce

Lindsey, Mike Smith, from Loretta Avent. And I'll locate you. Just take time to re-view this.

Answer. Okay.

Question. Okay. Have you ever seen this memo?

Answer. I don't remember seeing this memo. I'm cc'd on it so—

Question. But you don't have a recollection?

Answer. But I don't have a recollection, no.

Question. Do you know what Ms. Avent was referring to when she said that "More stuff keeps getting left at the security guard's desk for me on the same issue"?

Answer. No. No, I don't.

Question. About halfway down the paragraph, the line reads, "I'll instruct them—

Answer. Uh-huh.

Question [continuing]. "To forward anything they receive immediately to you." I'm assuming she's talking about security guards at the desk. Do you have any knowledge as to why Ms. Avent would send matters or things that were left for her directly to Cheryl Mills?

Answer. No. Not that I remember. I'm not sure why she wrote that.

Question. Did Ms. Avent, or do you know what Ms. Avent was referring to when she had said, just below that, "It has been crazy from the start"?

Answer. No. I'm not sure what she was—what she had meant by that.

Question. Would Ms. Avent normally cc you on memos that she wrote regarding any Indian issues?

Answer. She casually did cc me. I'm not sure what percentage. I'm not sure how many memos she wrote. Yeah, it wasn't unusual for me to get a memo cc'd to me from Loretta Avent, no.

Question. Just a matter of course?

Answer. Yeah.

[Schmidt Deposition Exhibit No. MS-5 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Schmidt what has been marked as MS-5.

Answer. Okay.

Question. It is a memorandum for Ms. Avent from Ahsha Ali, and I have problems with pronouncing the last name, Safai, I believe. The reason I'm showing you this is in the previous exhibit, Ms. Avent makes reference to two attachments. "One attachment has two pages with their concerns and the other one is a memo from Ahsha (my volunteer) from a telephone call he took."

Answer. Okay.

Question. Have you ever seen this memo, or does this memo refresh any recollections that you may have had?

Answer. No. It doesn't refresh any recollections. I don't remember. I don't remember seeing it.

Question. Do you know Dwayne Derrickson? Do you ever recall seeing his name?

Answer. No, I don't recall. I don't recall that name.

Question. Do you know an Arlyn Ackley?

Answer. I know who he is. He was the chairman of a tribe, and I can't remember which tribe. But he was a tribal chairman.

Question. Did you ever have meetings with Mr. Ackley or—

Answer. I don't remember any specific meetings. But given that he's a tribal chair, it's entirely possible I might have met with him, on an occasion.

Question. Do you ever recall Ms. Avent talking with you about what is mentioned down here, "If this issue can't be resolved, then we will have to go to the press, courts, or to the opposition"?

Answer. No, I don't. I don't remember.

Question. Okay.

Answer. I'm not sure what she's talking about there.

[Schmidt Deposition Exhibit No. MS-6 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Schmidt what has been marked as MS-6. It is a memorandum to Ms. Avent from Arlyn Ackley, Sr., Tribal Chairman of the Sokaogon Chippewa Community, regarding the disapproval of the Hudson application for trust status.

Answer. Okay.

Question. I'll let you kind of run through that.

Answer. Thank you.

Question. It's my understanding that this is the second attachment to that memo that was sent to you——

Answer. Okay.

Question [continuing]. Or cc'd to you?

Answer. Okay.

Mr. YANG. I just note for the record that Mr. Schmidt's name does not appear on this memo.

Mr. DOLD. And just so the record is clear, I believe this is an attachment to a memo that Mr. Schmidt was cc'd on, not written to.

EXAMINATION BY MR. DOLD:

Question. Have you ever seen this memo or letter?

Answer. I don't recall seeing this memo.

Question. Mr. Schmidt, let me just jump back for a second.

Answer. Okay.

Question. What is your understanding of the tribal leaders and the Indians that you dealt with, the Native Americans, as far as understanding the process of taking land into trust? Were they knowledgeable about the process? What is your understanding or your—let me rephrase that.

In your role as the policy advisor on Indian gaming, was it your understanding that the tribal chairman had an understanding of the process of how the Department of Interior took land into trust?

Mr. WILSON. Are you talking about every—all the chairmen of all the tribes?

Mr. DOLD. Just the generally—if normally they didn't get it or they did get it, or if they knew specifically that this was what they had to do.

Mr. WILSON. If some of them got it or some of them did didn't.

Mr. DOLD. That's an acceptable answer.

The WITNESS. Given there's 550 tribes, it's probably impossible to say with any real accuracy what their mood was. I would assume some probably got it, but some didn't. That would be a fair statement.

EXAMINATION BY MR. DOLD:

Question. On the second page of this letter written by Mr. Ackley, at the top, continuing paragraph, it says, last line: "Their indication to us is that they were both disappointed and that they disagreed with the disapproval of the trust application," their being the Department of Interior staff. Do you have any independent knowledge that any of the Department of Interior staff were disappointed with the department's decision?

Answer. Other than what I've read in the paper over the last couple of months, no, not that I recall.

Question. Do you know why Arlyn Ackley would have sent a letter with his complaints to the White House instead of the Department of Interior?

Answer. I'm not sure why he would have done that.

Question. Were you aware of the Sault Ste. Marie application to take land into trust in the Detroit area?

Answer. At the time, I guess, or in general?

Question. Yeah, in general.

Mr. YANG. The Sault Ste. Marie.

The WITNESS. Sault Ste. Marie Chippewa. In general, I think I was aware that they had put an application in. Whether that was what was based on what I read in the paper, I'm not sure. But I probably was aware that that had happened.

EXAMINATION BY MR. DOLD:

Question. Did you have any active role while you were at the White House in following that application?

Answer. Not that I can recall, no.

Question. Did you know about an application to take land into trust with the Mashantucket Pequots of Connecticut?

Mr. YANG. Counsel, can I ask for the relevance of these questions? These are all previous trust applications to the Department of Interior. Is there any indication that there would be some kind of wrongdoing in those applications? Or is this just to get Mr. Schmidt's understanding of those applications as well, for no particular reason?

Mr. DOLD. No, it's not for no particular reason at all, but we just want to get an understanding of what Mr. Schmidt's role at the White House was, if he followed previous applications the same way.

Mr. WILSON. Why don't you just ask him if he generally followed applications put into the Department of Interior? I think you would get a cleaner answer.

EXAMINATION BY MR. DOLD:

Question. Being the Indian gaming policy person at the White House, did you follow applications to put land under trust?

Answer. I didn't follow specific, that I remember, specific applications; but anything that was in the news, for example the Pequot case was a pretty famous case, I would generally keep track of that, I recall. But I don't recall any specific.

Question. Do you know if there were large political contributions made on behalf of the Pequots or Sault Ste. Marie Chippewa to the Democratic Party?

Answer. Not that I have any—not that I can remember, no.

[Schmidt Deposition Exhibit No. MS-7 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Schmidt what has been marked as MS-7.

Answer. Thank you.

Question. It is a memorandum for the President, from Leon Panetta. The subject is the Status of Native American Gambling Dispute or Gaming Dispute in Wisconsin.

Answer. Uh-huh.

Question. Recognizing that your name is not on this document or cc'd on this document, were you ever asked to provide information to Mr. Panetta on the status of the native American gaming dispute in Wisconsin?

Answer. Not that I can remember. This memo is actually—I left in July of 1996 so, you know, this memo had came after I already left. But I can't remember, no, not that I recall any.

Mr. YANG. Can I note for the record that the date on the memo is October 23rd, 1996.

The WITNESS. Right.

Mr. YANG. Just so that's on.

EXAMINATION BY MR. DOLD:

Question. Did you prepare in your capacity as policy analyst dealing with Indian gaming, did you prepare any memoranda or any information regarding the Hudson Dog Track matter to anyone at the White House?

Mr. YANG. Outside of the ones that have already been covered.

Mr. DOLD. Outside—

The WITNESS [continuing]. Of the memo.

EXAMINATION BY MR. DOLD:

Question. Outside of the memo you've sent already that we've—

Answer. I don't remember. I can't recall ever providing—no, I don't remember ever doing that.

Question. Were you ever aware that the President was interested in this matter?

Answer. No. I don't remember having knowledge of that.

Question. Do you recall discussing the Hudson Dog Track matter with anyone at the White House besides Loretta Avent?

Answer. No. I don't recall.

Question. Do you recall talking to anyone at the Department of Interior regarding the Hudson Dog Track matter?

Answer. No. I don't remember any such conversations.

Question. Do you recall talking to any other lobbyists besides Patrick O'Connor about the Hudson Dog Track issue?

Answer. Not that I can remember, no.

Mr. YANG. With the provision that you don't know if who you talked to may or may not be a lobbyist.

The WITNESS. Right.

EXAMINATION BY MR. DOLD:

Question. Did you ever receive any phone calls or did you talk with anyone from the DNC about the Hudson Dog Track matter?

Answer. I don't remember any calls from the DNC, no.

Question. Did you ever deal with anyone—I will rephrase that.

On the first exhibit, if you would turn to it real quickly, top of the second page, Ms. Avent refers, beginning of the last line of the first page, it says, this is a Department of Interior and Justice Department and that's where it should stay.

Did you ever talk to Ms. Avent about—

Answer. I am sorry. Could you point it out to me?

Question. Sure. It says, this is a Department of Interior and Justice Department and that's where it should stay.

Answer. Okay.

Question. Do you have any idea or did you have any discussions with Ms. Avent as to why this would be a Justice Department matter?

Answer. I do not remember any specific discussions around that issue. No.

Question. Do you recall any contacts on the Hudson Dog Track matter besides or apart from the ones we have already discussed?

Answer. No, I don't remember any others.

Question. In addition to the documents that we have shown you today, do you have any recollection of other documents that you have seen regarding the Hudson Dog Track matter?

Mr. WILSON. Not counting newspaper accounts?

EXAMINATION BY MR. DOLD:

Question. Documents, not newspapers.

Answer. Not that I can remember, no.

Question. Do you recall if anyone has ever mentioned that the Minnesota tribes have been strong Democratic Party supporters?

Mr. YANG. That has already been asked and answered, hasn't it? You already asked the political affiliation of the opposing tribes. Maybe he doesn't know they are opposing tribes.

Mr. DOLD. Has anyone ever mentioned the fact that the Minnesota tribes have been strong Democratic Party supporters.

Mr. WILSON. Anyone ever mention?

EXAMINATION BY MR. DOLD:

Question. Anyone at the White House ever mention?

Mr. WILSON. During the time he was at the White House, did he recall anyone mentioning that?

Mr. DOLD. Yes, thank you.

The WITNESS. Not that I can specifically remember at this point over 3 years. It is hard to pinpoint, but nothing comes to mind, no.

EXAMINATION BY MR. DOLD:

Question. Do you have a general recollection of the subject matter, whether you knew by your own personal account whether the Minnesota tribes were big Democratic Party supporters?

Answer. Not, you know, not that I can, not that I can remember. I don't remember that ever being something that was in the mix.

Question. Prior to July 14, 1995, did you ever contact the Department of Interior on the Hudson Dog Track matter to gain a status report or to find out what was going on?

Mr. YANG. He has already testified that he did not contact any Interior Department officials about the Hudson matter, if I am not mistaken.

The WITNESS. I don't remember any contacts, such contacts.

EXAMINATION BY MR. DOLD:

Question. Mr. Schmidt, did you ever receive any communications about voter turn-out from different Native American tribes?

Answer. Over the 3 years I was at the White House?

Mr. YANG. I am sorry, these particular tribes or tribes in general.

EXAMINATION BY MR. DOLD:

Question. Tribes in general, if that would have been something that you would have gotten information on.

Answer. I don't remember getting that kind of knowledge. Generally, I wouldn't have. I would be mostly policy.

Mr. YANG. I would also like to note that it is difficult for me to see the relevance of that question, too. There can't be fund-raising impropriety, given that voter turn-

out is an entirely legitimate reason, entirely legitimate knowledge for Mr. Schmidt to have, if he did have it.

Mr. DOLD. I am not saying that your knowledge would be improper. If that is the insinuation, I hope I am not giving that one.

EXAMINATION BY MR. DOLD:

Question. If I can turn your attention back to the first exhibit with Ms. Avent, halfway through the second paragraph it says, I am on my way to a meeting with five of our strongest tribal leaders because of their significant voter turnout. Do you know who she was talking about when she was talking about these, some of our strongest tribal leaders?

Answer. No, I don't remember. No, I don't know.

Question. Did you ever meet, Mr. Schmidt, with Debbie Duxtator?

Answer. The Chair of—I believe that I did. I believe if this is the right person, a Chair of one of the tribes in the Midwest. I am blanking on the tribe. Yes, I am sure I have been in meetings with her over the 3 years.

Question. Did you ever speak with Ms. Duxtator about the Hudson Dog Track matter?

Answer. Not that I can ever recall, no.

Question. Did you ever speak with Marge Anderson?

Answer. Again, over 3 years.

Question. Over the 3 years?

Answer. Did I meet with her in general?

Question. Yes.

Answer. Yes.

Question. What things would you meet with Marge Anderson about?

Answer. As I recall, she was the Chair of, I believe, one of the Chippewa tribes in Minnesota, if I am not mistaken. Over the course of the 3 years, I met with lots of tribal leaders.

Question. Just with Marge Anderson, do you recall—

Answer. I don't remember any specific reasons why I would have met with Marge Anderson, no.

Question. Have you ever met with JoAnn Jones?

Answer. That name, no, that name isn't ringing a bell with me. Do you know who she is? It might be more helpful.

Question. Do you know a Louis Taylor?

Answer. That name doesn't sound familiar to me, so not that I can remember.

Mr. DOLD. I have no further questions.

Mr. YANG. On behalf of the Minority, thank you again for coming. I just have a couple quick points to clarify if I could.

EXAMINATION BY MR. YANG:

Question. There was some questions directed at you earlier about the reason why you sent the e-mail to Cheryl Mills. Were you asked by Cheryl Mills or anyone in counsel's office to provide them with updates on the Hudson matter?

Answer. Not that I can recall. No.

Question. If I understand your testimony correctly, the reason why you sent the e-mail to them was because you felt that it was a legal, regulatory issue that they should be aware of; is that correct?

Answer. My remembrance is that it was probably just an FYI, raising an issue so they knew about it.

Question. With regard to this issue being a hot political issue as referred to in several of the documents, just to get your general understanding, Indian gaming issues are very controversial among tribes; is that not correct?

Answer. That was my understanding, yes, just in general, they were touchy issues in Indian country.

Question. So for you or anyone else to say that it was a difficult political issue could be referring to the fact that in terms of a policy perspective it would be difficult to deal with this issue?

Answer. Yes. Yes. That is an accurate statement.

Question. If I could direct your attention to Exhibit 2, right below the "according to Lorretta" line on page 2.

Answer. On page 2, okay.

Question. You had been questioned earlier about legal and political reasons. You weren't making a legal judgment as to whether it would be or wouldn't be improper—

Answer. No.

Mr. WILSON. Let him finish the question.

Mr. YANG. That it would or wouldn't be improper for Mr. O'Connor to try to tie the President to this issue, you weren't making a legal judgment as to whether that was legally proper or not, were you?

Answer. Not that I remember, no. I am sorry. Did you mean in my answer or in the memo?

Question. In the memo.

Answer. Right, not in the memo. Thanks.

Question. There had been a question asked earlier about why Chairman Ackley sent this memo to Loretta Avent. Is it your understanding that it was her regular role to meet with tribal chairmen as part of her job duties and discuss with them issues of concern to the tribes?

Answer. That is my general understanding, yes.

Question. There was a comment at the beginning of the deposition about your coming from a distance. Where are you coming from to attend this deposition?

Answer. Detroit, Michigan, that area.

Mr. YANG. I have no further questions. I would just like to note for the record my belief, the Minority's belief that this deposition was probably unnecessary. Mr. Schmidt's e-mail speaks for itself and the fact that he has no independent recollection of that e-mail could easily have been determined by directing the question to his attorney or to him in a nondeposition context. To have Mr. Schmidt come out from Detroit at presumably committee expense; is that correct?

The WITNESS. Yes.

Mr. WILSON. We hope.

Mr. YANG. Is an egregious waste of taxpayer dollars and also somewhat insensitive to Mr. Schmidt's interests, given that he has had to hire a very competent attorney to represent him in these matters.

I do not have anything further. Do you have anything else you would like to add to the record?

The WITNESS. No.

Mr. DOLD. Mr. Schmidt, on behalf of the Members of the Committee on Government Reform and Oversight, on behalf of Mr. Wilson and myself, we sincerely thank you for coming out.

[Whereupon, at 11:15 p.m., the committee was adjourned.]

[The exhibits referred to follow:]

THE WHITE HOUSE
WASHINGTON

April 24, 1995

MEMORANDUM FOR HAROLD ICKES

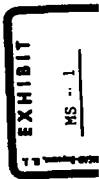
FROM: Loretta Avent

I just got a call from Bruce in reference to a person named Pat O'Connor, whom I don't know, who has called me on numerous occasions. Unfortunately, I was on my reservation circuit, so I asked both Jay Campbell and Katy Button in my office to call and advise him I was travelling and that before I could respond personally, I would need a letter from one of the tribal leaders he was representing explaining their situation and/or their concerns. Following the legal advice we have received concerning these kinds of issues, I have not and would not speak with him, or any lobbyist or lawyer.

Irrespective of lawyers and lobbyists say they know personally in the Administration, my first responsibility is to take care of the press. Because I am aware of the politics and the press surrounding this particular situation, it is in our best interest to keep it totally away from the white house in general, and the press in particular. This is such a hot potato (like Cabazon) -- too hot to touch. The legal and political implications of our involvement would be disastrous. I am on my way into a meeting with five of our strongest tribal leaders (because of their significant voter turnout), who have already gone ballistic about other tribal governments who have greater access to the Administration because of their ability to pay hired guns (as they call them) and their belief that this unfairly gets things to happen. They believe that when the President said "Government-to-Government" and "respect for tribal consultation" that it meant directly with them. They consider the lobbyists and lawyers trying to access us as staff they (the tribal leaders) pay and that their responsibility is to report and advise them (the tribal leaders), and as tribal leaders elected by their membership, they will do the business of tribal governments directly with our government.

This puts us in a Catch-22. To ensure we don't get caught in this web, I treat all 550 elected tribal leaders the same (I deal directly with them on behalf of the President).

Harold, my goal is to clean up as much as I can clean up (seven reservations in less than ten days) prior to the April 28th meeting. We are 98% there. I do not want this situation to be part of or anywhere near the meeting on the 28th. This is a



EOP 069070

Department of Interior and Justice Department and that's where it should stay. Finally, the fact that he would even suggest I would discuss anything remotely connected to Indian gaming tells me he is not truly connected to Indian country (all 550 federally recognized tribes know I don't do gaming and say it). Both Domestic Policy and Intergovernmental Affairs deal with this issue in this manner.

I explained this to Bruce and he understands the way I operate and I assured him I would make the call directly to advise the party that called. I will do this as soon as my meeting is over. I'll call later and give you an update. The press is just waiting for this kind of story. We don't need to give it to them.

One last concern leading into Friday, but I am working on that now. Because of the diversity and complexities within Indian Country and the constant changes in elected leadership, there is no lobbyist or lawyer that I will put before my responsibility to the President and his commitment to Indian Country (April 29, 1994).

cc: Maggie Williams
Cheryl Mills

EOP 069071

EXECUTIVE OFFICE OF THE PRESIDENT

24-Apr-1995 07:17pm

TO: Cheryl D. Mills

FROM: Michael T. Schmidt
Domestic Policy Council

CC: Carol H. Rasco
Loretta T. Avent
Katharine M. Button

SUBJECT: Call from Lobbyist Pat O'Connor

Cheryl,

This e-mail is to fill you in more detail about a call that Loretta and I were on with a Lobbyist/Fundraiser named Pat O'Connor. It was half-dictated to me by Loretta via phone, so I apologize in advance if it is unwieldy at times:

Pat O'Connor is a lobbyist that represents a number of gaming tribes in Wisconsin and Minnesota. He is also, I believe, a DNC trustee of some sort. He is working on some off-reservation gaming project (dog racing I think) called "the Hudson Project," which under the Indian Gaming Regulatory Act will need Secretary Babbitt's approval to go forward, since it is off reservation gaming.

Pat called Loretta last week on this issue. As you know, last year WH counsel advised Loretta that she should not meet with lobbyists or lawyers on Indian issues. Also, on April 29, the President signed a memorandum stating his strong support for the government-to-government relationship with the Tribes and direct consultation (which they hold us to in every letter they send!!) We get hit hard by Tribal leaders when we meet with Lobbyists, since many times the tribal leaders are not even aware that the lobbyists are calling us on their behalf. Loretta was out of town when Pat called, but asked Jay and Katy Button on her staff to return the calls from Pat, informing him that he needed to have the Tribal leader(s) that he represent send in whatever request that they had, and that she would work with the leaders directly. This is her standard response in these situations.

After several calls trying to get around Jay and Katy, on Wednesday of last week Pat sent in a memo from him (not from the Tribal leaders as requested) to Loretta asking to talk to her about intervening with Secretary Babbitt to allow this Hudson project to be able to do off-reservation gaming. This fax also

EXHIBIT

NS - 2

EOP 069076

stated that Loretta had told the leader of the Red Cliff Tribe (who Loretta has never met or spoken with) that she would intervene on their behalf (not true!). After this fax came in, Jay on Loretta's staff called Pat's office again asking for the letter from the tribal leader. It never came.

In the meantime, Pat bumped into the President today in Minnesota and mentioned to him that Loretta never returned his calls (technically true, but her staff did return them several times because she was travelling). A call came from AA1 this morning from Bruce Lindsey to Loretta to find out what had happened. Loretta reviewed the story I have written so far, and told Bruce that she would call Pat to explain our process. Loretta called me (since I do Indian Gaming Policy) and then conferenced me into a call with Mr. O'Connor (her assistant Katy Button was also in on the call). And then, in Loretta's words, "his story began to unravel" in two ways: 1) He had to admit to Loretta that he had a return call from Loretta's office; 2) See the attached fax from him -- he had to back off of the statement about the leader of the Red Cliff Tribe talking to Loretta about this since it was not true. He was agitated that Loretta could not meet with him on this issue, and he took my name and number and promised to call me about this issue sometime this week, and that he would also bring it up in his meeting this Friday with Don Fowler at the DNC. He abruptly hung up before I could respond.

According to Loretta:

The first mistake Pat O'Connor is making is trying to tie the President into an issue that he cannot be tied into for legal and political reasons. The White House should not be involved in this issue!

He must stop telling others that he has access to the WH on this issue. As you know, we legally cannot intervene with the Secretary of Interior on this issue.

Please have Harold call Don Fowler and explain that there are no secrets in Indian Country, that word of this conversation is already getting out and it would be political poison for the President or his staff to be anywhere near this issue.

Loretta consistently will not allow anyone take advantage of the President's best intentions and put him into potentially negative press situation (especially with 100 tribal leaders coming to town on Friday).

Loretta asks that you do whatever you think we need to do to take care of the President's best interests on this -- these Indian Gaming issues are always explosive (as the Cabazon situation made clear).

If you have any questions on any of this, call Katy Button to get ahold of Loretta in AZ, or call me at 6-5567 and I will try to

EOP 069077

give you whatever info you need.

EOP 069078

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May 8, 1994

Mr. Harold Ickes
Deputy Chief of Staff for Policy
and Political Affairs
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Proposal pending at Interior to create trust lands at the Hudson Dog Track in Hudson, Wisconsin for an Indian Gaming Casino

Dear Mr. Ickes:

I appreciate your calling me concerning the above subject on Tuesday, April 25, and again on Wednesday, April 26. I assume these calls were prompted by my discussions with the President and Bruce Lindsey on April 24 when they were in Minneapolis. I returned your calls and talked to your assistant, Mr. Suman, who advised that you were not in the office when I called. Since I had an appointment with Don Fowler on Friday, April 28, to discuss this matter, I decided not to try to contact you until after the Fowler meeting with the chairman of five of the many Minnesota and Wisconsin tribes that oppose the creation of the trust lands for gambling purposes and the bailout of the current dog track owners.

I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. Since the Fowler memo was sent to you, the City Council of Hudson, Wisconsin, passed a resolution opposing the construction and operation of a casino at the dog track.

The Secretary of Interior has the discretion to create such trust lands if he finds:

1. it creates an economic benefit for the applicants, and
2. it does not create economic hardship for others.

The Minnesota and Wisconsin tribes who met with Interior officials explained the economic losses they would suffer if another casino were established in this area, due to the close

EXHIBIT

MS - 3

FOUO 064262

Mr. Harold Ickes
May 8, 1995
Page 2

proximity of their casinos. In addition, Coopers & Lybrand as well as Peat Marwick recently submitted to Interior a detailed analysis outlining the adverse economic repercussions that would result from this happening.

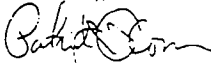
I am concerned that those at Interior who are involved are leaning toward creating trust funds. We requested a copy of the Arthur Andersen report which the petitioners commissioned which found no adverse financial impact. The copy submitted to us "blocked out" all of the vital information relating to the size of the operation, how many machines, tables, etc., which we need to know, as well as the statistics and reasoning used in determining that the surrounding casinos would not suffer a serious economic impact. We need this data in order to put our best case forward to Interior. We have no objection to Interior's submitting the Coopers & Lybrand or the Peat Marwick reports to the petitioners.

I would also like to relate the politics involved in this situation:

1. Governor Thompson of Wisconsin supports this project.
2. Senator Al D'Amato supports this project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York.
3. The chairman of the Indian tribe in the forefront of this project is active in Republican party politics; this year he was an unsuccessful Republican candidate for the Wisconsin State Senate.
4. All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee.
5. The entire Minnesota (Democrats and Republicans) Congressional delegation oppose this project. The Wisconsin Democratic Congressional delegation (including Congressman Gunderson in whose district the dog track is located) oppose the project.

I certainly will appreciate it if you will meet with me and two representatives of the tribes as soon as you can work it into your schedule, since a decision by Interior is imminent. We are available on a 24-hour notice.

Yours very truly,



Patrick J. O'Connor

EOP 064263

PJO:shy
Date: 5/15/95

IUD FOIA1 0009

Mr. Harold Ickes

May 8, 1995

Page 3

blind copies:

1. Chairman Don Fowler - David Mercer
2. Larry Kimo
3. Persons attending Friday meeting with Fowler

EOP 064264

HUD FOIA 00010

THE WHITE HOUSE
WASHINGTON

August 18, 1995

MEMORANDUM FOR CHERYL MILLS

CC: Harold Ickes
Maggie Williams
Bruce Lindsey
Mike Schmidt

FROM: Loretta T. Avent *lit*

RE: For Your Eyes Only

COPY
from ORM
0A9174

More stuff keeps getting left at the security guards desk for me on the same issue (see attached). It's building and you need to just be aware of what's out there. I, unfortunately, will be on business and vacation travel through September 6. I will alert my volunteer and intern to be on the look-out for any other information that might be left at the security guards desk. I'll instruct them to forward anything they receive immediately to you. I assume this means they're building up to something. What, I don't know. It has been crazy from the start. I just want to make sure we're all on the same page with the same information. One attachment has 2 pages with their concerns and the other one is a memo from Ahsha (my volunteer) from a telephone call he took.



EOP 069072

August 17, 1995

URGENT--URGENT--URGENT--URGENT

MEMORANDUM FOR LORETTA T. AVENT

FROM

Ansha Ali Safai

RE:

Hudson

Dwayne Derrickson called and expressed deep concern for the issue his tribe faces on behalf of Chairman Arlyn Ackley. The Chairman is looking for a response to their issue. Chairman Ackley is hoping you will be able to provide some guidance within the next few days because of the fact that he is planned to face his tribal council as well as his tribal community and is expected to have some answers regarding the Hudson case.

Dwayne talked about the importance of this issue being brought to closure. He used the words, "If this issue can't be resolved, then we will have to go to the press, courts, or to the opposition!".

They will be in town next week and were hoping to meet with you. I told them that I expected you to be on travel, but for them to check back with me late today or tomorrow.

Dwayne said that Chairman Ackley hardly asks for help, but in this case they are hoping that you will be able to provide them with some answers. Please advise.



EOP 069075

M E M O R A N D U M

August 3, 1995

TO: Ms. Lorena Aveni
Special Assistant to the President
for Intergovernmental Affairs

FROM: Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community

RE: Disapproval of Hudson Application for Trust Status

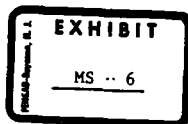
We have been able to obtain information from the Department of the Interior's Indian Gaming Office that their staff people disagreed with the disapproval of our trust application signed by Michael Anderson of the Department of Interior.

All my information indicates that Interior's staff was disappointed and completely disagreed with this decision. In fact, and I quote "there was no real evidence to support disapproval". The staff tells us that the people who made the final decision did not follow § 20 of the Indian Gaming Regulatory Act of 1988. That this decision was purely a discretionary-/political one.

In the letter, Mr. Anderson stated that there was a problem with the St. Croix Waterway. However, the staff tells us that this small issue could have been explained but we were not given the opportunity to respond to this.

The Department of the Interior staff indicated to us that they could not find anything detrimental in our application either to nearby tribes or to surrounding communities. Moreover, Mr. Anderson states that this property acquisition would be detrimental to a nearby tribe.

Another quote from the Department's staff was "What is the point of § 20 if not to be helpful to remote tribes?". They indicated to us that the extraordinary thirty (30) day period that was provided to our opponents which allowed them to submit an additional



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economic study did not provide any substantial information that would point to the proposed facility being detrimental to the surrounding communities or tribes. They commented that there are two criteria. One -- it should be in the best interest of the Indian tribe (applicant). Two -- Could not be detrimental to the surrounding communities or nearby tribes. Their indication to us is that they were both disappointed and that they disagreed with the disapproval of the trust application.

As the Chairman of my tribe I must protest the Department of the Interior's treatment of our application for the placing of the Hudson Dog Track into trust status. The Minneapolis BLA Area Director and staff followed the letter of the law in approving our application. The Department of the Interior's staff (per our information) also carefully followed the criteria set out in the Indian Gaming Regulatory Act. However, the people who made the final decision did not.

Finally, if I may reiterate these points which we were able to obtain. (Lorena, they were taken from a telephone conversation, therefore repetitious and redundant:.)


1. Staff was disappointed;
2. Decision makers did not fully consider Section 20 IGRA;
3. Staff disagreed with decision;
4. No real evidence;
5. St. Croix waterway question could easily be addressed (We were not given an opportunity to do so.);
6. Staff didn't want to set national precedent of a tribe rejecting another tribe's application;
7. Staff didn't want to set a national precedent of a community rejecting a tribe's application - 6 and 7 would have to be detrimental;
8. Decision makers were worried about being second guessed by the Governor;
9. What is the part of best 20. IGRA if not to helped "remote" tribes?;
10. Political, not factual decision; and
11. Staff could not find anything detrimental to the nearby communities or tribes.

EOP 069074

THE WHITE HOUSE
WASHINGTON

October 23, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: LEON E. PANETTA 
Chief of Staff

SUBJECT: Status of Native American Gaming Dispute in Wisconsin

In response to a note in a background memo for your visit to the Green Bay-Milwaukee area, you inquired about the status of a dispute between the Interior Department and a Native American tribe in Wisconsin.

The attached memorandum reporting on the status of the litigation against the Interior Department by the tribe was prepared by David Fein in the White House Counsel's Office.



EOP 069098

[The deposition of Thomas Jay Schneider follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: THOMAS JAY SCHNEIDER

WEDNESDAY, DECEMBER 10, 1997

The deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 3:10 p.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: James C. Wilson, Senior Investigative Counsel; Robert J. Dold, Jr., Investigative Counsel; Elliot Berke, Counsel; and Michael J. Yeager, Minority Counsel.

MR. SCHNEIDER:

PAUL L. KNIGHT, ESQ.
Attorney at Law
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006-3483

Mr. WILSON. On the record. Good afternoon. I, on behalf of the members of Government and Reform and Oversight, thank you very much for appearing here today. This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and notary public, and I will now request that the reporter place u under oath.

HEREUPON, TOM SCHNEIDER, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. WILSON. For the record, I will note those who are present at the beginning of this deposition. My name is James Wilson, and I am the designated Majority Counsel. I am accompanied today by Bob Dold and by Elliot Berke. Michael Yeager is the designated Minority counsel. Mr. Schneider is represented by Mr. Knight.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a courtroom. I ask you about conversations you have had in the past and you are unable to recall the exact words used in the conversation or conversations, you may state that you are unable to recall those words, and then you may give me the gist or substance of any such conversation to the best of your recollection.

If you recall only part of a conversation or only part of an event, please give me your best recollection of that conversation or event. If I ask you whether you have any information about a particular subject and you have overheard other persons conversing with each other regarding that subject or have seen correspondence or documentation about that subject, please tell me that you do have such information and date the source from which you derive such knowledge.

Majority and Minority committee counsel will ask you questions regarding the subject matter of this investigation. Minority counsel will ask questions after Minority counsel has finished. After the Minority counsel has completed questioning, a new round of questioning may begin.

Members of Congress who wish to ask questions, should they attend today's deposition, will be afforded an immediate opportunity to ask their questions. When they are finished, we will resume at the point we left off.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights.

Any objection raised during the course of this deposition shall be stated for the record. If the witness refuses to answer a question, Majority and Minority counsel will confer to determine whether the refusal is proper. If Majority and Minority counsel agree that the question is proper, the witness will be asked to answer the question. If an objection is not withdrawn, the chairman or a member designated by the chairman may decide whether the objection is proper.

This deposition is considered as taken in executive session of the committee, which means that it may not be made public without the consent of the committee, pursuant to clause 2(k)(7) of House Rule XI.

No later than 5 days after your testimony is transcribed, and you have been notified that your transcript is available, you may submit suggested changes to the chairman. It has been the case in the last week that transcripts are made available quite quickly, and I assume they will be ready for review within 2 days of today. We will inform you immediately, and we will work out a mutually agreeable schedule, and obviously we will do whatever we can to accommodate anybody's needs to review the transcript.

Committee staff may make typographical and technical changes requested by you. However, substantive changes, modifications, or clarifications must be accompanied by a letter requesting the change and a statement of your reasons for each change.

A letter requesting substantive changes must be signed by you and will be included as an appendix to the transcript, conditioned upon your signing of the ultimate transcript.

EXAMINATION BY MR. WILSON:

Question. Do you understand everything we have gone over so far?

Answer. Yes, I do.

Question. If you don't understand a question, please say so, and I will repeat it or rephrase it so you do understand the question.

Do you understand that you should tell me if you do not understand my question?

Answer. Yes, I do.

Question. The reporter will be taking down everything we say and will make a written record of the deposition. Please give verbal and audible answers in order to assist the House reporter.

If you can't hear me, please say so and I will repeat the question or ask the reporter to read the question back.

Your testimony is being taken under oath as if we were in court or before the committee, and if you answer a question, it will be assumed that you understood the question and the answer was intended to be responsive to the question.

It is my understanding that you are here voluntarily today, and I thank you very much for appearing voluntarily.

Do you have any questions about this deposition before we begin?

Answer. No, I do not.

Mr. WILSON. Mr. Knight, if you have any observations, or Mr. Yeager?

Mr. KNIGHT. The only observation I had, you made a statement and I didn't take it down specifically, about him disclosing information or comments that he received, and I would just indicate that that would exclude matters that he learned through the attorney-client privilege. That would be it.

Mr. YEAGER. I have a brief statement to make.

This deposition apparently relates to the Interior Department's denial of an application by three Indian tribes to place land in trust for development of a casino project in Hudson, Wisconsin. On behalf of the Minority, I object to this deposition and all depositions taken on this matter. The Hudson casino matter has been investigated by the Senate Governmental Affairs Committee. It is being investigated by the Department of Justice. I understand that the Committee on Resources has commenced its own investigation. In the view of the Minority, this is duplicative, unnecessary, and a waste of taxpayer resources.

As I have said before, it is not that the Minority disputes the committee's power to proceed with the inquiry; it is, however, that it is an unnecessary exercise of that power.

That is all.

EXAMINATION BY MR. WILSON:

Question. Thank you.

Mr. Schneider, would you please state your full name for the record and spell your name?

Answer. Thomas Jay, J-A-Y, Schneider, S-C-H-N-E-I-D-E-R.

Question. Did you attend college?

Answer. Yes.

Question. Where did you attend college?

Answer. Harvard University.

Question. Did you attend any graduate schools after Harvard?

Answer. Following Harvard, I went to Oxford University and took a doctor of philosophy degree, and then I went to Harvard Law School and took a JD.

Question. And if you could—and I will emphasize the brief part of this—provide brief employment history from graduation from law school until the present?

Answer. From law school?

Question. Yes.

Answer. Following law school, I went to work in the Washington office of a Chicago-based firm by the name of Seyfarth, Shaw, Fairweather & Geraldson for 2 years, and in the early September of 1982 I created a new law firm with two lawyers in New York, called Quasher, Richter & Schneider.

In 1984, Alan Quasher and I created a consulting firm called Restructuring Associates that operated in parallel and simultaneously with the law firm. So I had two careers.

In 1991, the law firm was dissolved and I became a general partner at O'Connor Hannan. Simultaneously, I continued as the president and CEO of Structuring associates, the consulting firm started in 1984.

In 1995, at the beginning of 1995, I went from being a general partner to becoming of counsel at O'Connor & Hannan, which is the current status there, and I have continued through this process as the president and CEO of Restructuring Associates.

Question. Apart from your counsel, have you discussed this deposition with anybody?

Answer. My wife, my secretary, and the client I was having a meeting with and I proposed to be having a meeting with today in Chicago, that I left and left covered with another consultant in my firm.

Mr. WILSON. Actually, if I may go off the record for just a moment here.

[Discussion off the record.]

EXAMINATION BY MR. WILSON:

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter? And I think this is my last parenthetical, but just using shorthand to refer to Hudson Dog Track and land being taken into trust, et cetera, will just refer to this as Hudson Dog Track. Has anybody from the Department of Justice talked to you about the Hudson Dog Track matter?

Answer. I received a telephone call—I don't know whether the FBI is part of the Department of Justice. I received a telephone call from an FBI agent, a woman by the name of Pat somebody, who called to ask about—it was on a voice mail. I called my counsel, and my counsel gave her a call, told her that we were doing this deposition and that after this deposition was over, if she still wants to talk to us, then I can talk to her.

Question. When did you receive that telephone call?

Answer. It would have been last week in the middle of the week.

Mr. KNIGHT. I believe her name is Doyle or Douglas.

The WITNESS. Pat Doyle. I don't know whether she counts as part of the Department of Justice or not.

EXAMINATION BY MR. WILSON:

Question. I just used to work for the Attorney General, and we always hoped and thought they were part of the Department of Justice.

Apart from this deposition and apart from arranging the logistics of this deposition, have you spoken with any congressional personnel, members or staff, about the Hudson Dog Track matter prior to today?

Answer. No.

Question. Do you have any documents that refer to or pertain to the Hudson Dog Track matter in your personal possession?

Answer. No.

Question. Did you ever have any documents pertaining to the Hudson Dog Track matter in your personal possession?

Answer. When you say "ever," what do you mean?

Question. Presumably prior to the time that you now don't have any. But from 1994 until the present. I do understand that there are firm records from O'Connor Hannan; we have subpoenaed them and received them. I am trying to determine whether there is anything outside of the O'Connor & Hannan records.

Answer. In that framework, the answer is no.

The reason I ask was that there seems to have perhaps been a fax that was sent me that is in the O'Connor & Hannan files. I have no record of the fax. I don't remember seeing it. It seems to have been separated from its cover sheet. It was not a letter to me, it was a copy of a letter that was sent by Pat O'Connor, and it was, I guess, cc-ing me or blind-copying me with a letter. I don't have a copy

of it. I don't remember seeing it. If I did get it, I threw it away basically after reading it.

If that classifies as "ever," I may have at one point in time had something, other than, I have nothing.

Question. Do you know who that letter was addressed to?

Answer. Since I never saw it or have no memory of it, no. I was told that it had been sent to me.

Question. Given the nature of your status at O'Connor & Hannan, did you ever keep business records at any premises other than the O'Connor & Hannan offices that relate to Hudson Dog Track?

Answer. No.

Question. When did you first hear the name the Hudson Dog Track or St. Croix Meadows Greyhound Park?

Answer. In this year, when a reporter from the Madison newspaper called me up and asked me about it, and I asked him what it was, and then he related it to the Indian tribes. So before this year, I had never heard of Hudson Dog Track.

Question. In 1995, were you aware at all that there was an application process to try and take—by Indian tribes, to take land into trust for the purposes of gaming in Wisconsin?

Answer. The precise answer to your question is no, and I think we probably ought to have a little explanation.

My level of detail about this entire transaction is extremely superficial, and that is why I didn't know about the name, the Hudson Dog Track.

I knew that there were groups of Indians that O'Connor & Hannan represented that were opposing the license for a dog track. So I had heard about a dog track in Wisconsin. I didn't know it was Hudson until this year.

I didn't know that—you said something about land was trying to go into trust. That I didn't know about. All I knew was there was a license, an application for a license for gaming at a dog track, and that was the level of detail that I knew.

Question. And staying at that level of detail, when did you first hear about that general matter?

Answer. It would have been early May—I don't know the precise date—in 1995.

Question. And how did you hear about that matter?

Answer. Pat O'Connor had called me in my offices at Restructuring Associates wanting to talk to me, and we finally connected, and he raised it at that point in time.

Question. And at that time that he did raise the matter, what did he tell you about it?

Answer. He—after the exchange of pleasantries, he asked me if I could help him on a matter with a new client. I asked what the issue was. He said that O'Connor represented some Indian tribes in the Minnesota area that had gaming interests today; that there was a dog track in Wisconsin that was applying for a license; that an Indian group was essentially fronting on the license, but in fact there was an independent party that was really driving this; and that we were trying to oppose that license because it would hurt the financial interests of the group that we represented.

Question. And did Mr. O'Connor ask you to do anything?

Answer. He explained to me that he had had conversations with Harold Ickes in the White House asking for his help and that Harold had told him that he would look into it, and Pat had said that he had been trying to get in touch with Harold and had not been getting a response and was doubtful that Harold was actually going to look into it. He asked me if I would help get the White House to move forward on this issue.

Question. And what did you tell Mr. O'Connor?

Answer. I said if I had a chance, I would raise it.

Mr. WILSON. I have provided Mr. Schneider with a document which I have marked Exhibit TS-1. I will give you a moment to review that.

[Schneider Deposition Exhibit No. TS-1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

EXAMINATION BY MR. WILSON:

Question. It is dated June 27, 1995, a cover letter from Mr. Corcoran to Mr. Lewis Taylor, and it appears to be billing records for the month of May 1995.

I didn't mean to inflict this whole thing on you. There is only one entry I wanted to ask you about. On the second page, 11 lines from the bottom, there is a para-

raph or a clause that reads, "Get report from Tom Schneider that he talked to President Clinton regarding status of matter."

I will back up from this for just a moment. You discussed with Mr. O'Connor the basic subject matter, and he asked you to do something.

If you can, and it may shorten things as much as possible, if you could give me chronological description of your involvement in what we now call the Hudson Dog track matter. That might shorten things as much as possible, if you can tell me, to the extent of your recollection, each of the things that you did do that were pertinent to this matter.

Answer. Okay. Following that conversation, about a week later there was an event at the Mayflower Hotel, and I received a call—which is one block, half a block from my office—that President Clinton was going to be there, and asking me to stop by, since I know the President.

I did basically after work, on the way to my car, parked on the other side of the Mayflower, I stopped by, I saw the President. It was a large reception. I talked to him for a few minutes, did not say anything about the Hudson Dog Track, and saw Harold Ickes there.

At that point in time, after sort of the greetings, I asked him if he had talked to Pat about the dog track, the Indian and dog track issue. He recalled that he had not said that he had told Pat that he was going to look into it. I said to Harold that I thought that it deserved looking into and I would appreciate it if he would. And that was the extent of the conversation. It took literally 2 or 3 minutes; it may have gone up to 4 or 5, counting the initial introductions.

That would have been in the first half of May; I don't know the precise date. There is no record of it, or I have no record of it, but I remember it.

After that meeting, several days later, I called Pat and said that I had seen the President at this reception and that I had talked to Harold Ickes and that Harold recalled his conversation with Pat and said he was looking into it.

At that point in time, Pat—a nice way of putting it was that he didn't express great deal of credibility that Harold was going to follow up and expressed his frustration that Harold had not been returning calls, and I indicated to him that my experience, due to sort of a personal relationship in the White House, is when people say they are going to follow up, they usually follow up. Therefore, I said that I thought Harold would follow up. In other cases where he said he wouldn't, he didn't; this time he said he would.

That was it. And Pat's closing comments were that he was concerned about that, and I said, well, you should try to follow up now with Harold directly; it would be appropriate since I had this conversation with him.

About 2 weeks later, I called the White House and had a 2- to 3-minute conversation at the most with Harold, and it was literally just following up to see—I indicated that there were some doubts that had been expressed as to whether or not he was going to do this, and I was just checking to see whether he was going to follow up.

At that point in time, he said, again, very nicely—I am going to put it very nicely; these are not his exact words—was that he told me he would follow up and therefore he would. And, again, that was a—literally a couple-minute conversation.

I did not get back to Pat about it, and that was the last time I heard about this matter until this year when I got a call from the Madison reporter.

Question. When you were having these discussions with Mr. O'Connor, did he indicate to you what he would like Mr. Ickes to do about the dog track matter?

Answer. No more detailed than what he wanted was he wanted the White House's help on the licensing matter, and that was the extent of the detail, because he had said he had already talked to Harold about the matter and he was asking me just to make certain that Harold followed up.

I didn't bother asking him what he wanted Harold to do, because at that point in time they would have been sort of getting to a third party who didn't know very much about the details to act as intermediary, and it just didn't make sense. So I didn't probe. It was literally Pat had said he had talked to him, and I was saying to Harold, do what you said you were going to do with Pat, and that was really sort of the involvement. And because of the relationships, I guess I have credibility that I did not think at this particular moment in time he had.

Question. Is it accurate then to say that you assumed that whatever Mr. O'Connor specifically wanted Mr. Ickes to do had been discussed and they had personal interaction?

Answer. Yes. That was very clearly implied, that he had; Pat had asked something specific.

From my previous dealings with Pat in the firm, he has been around Washington, D.C., and tends to ask for very specific things as opposed to general things.

Question. Now, turning to the document I gave you a moment ago marked TS-1, and referring to the second page of text—

Answer. 11 line from the bottom.

Question. "Get report from Tom Schneider that he talked to President Clinton regarding status of matter." You have given me an explanation of what you told Mr. O'Connor, and this document speaks for itself. It is obviously—well—

Answer. It is a bill.

Question. I think it does speak for itself. I can't characterize anything other than what it says here. But did you have any other subsequent conversations about your meeting with the President and with Mr. Ickes at the Mayflower Hotel other than the one you have described?

Answer. No.

Question. And you did state that you did not speak with the President about the Hudson Dog Track matter?

Answer. I absolutely did not talk to the President then or ever about the dog track and Indians. I have talked to him about other Indians but not these.

Question. Have you had any other involvements or client relationships with Indian tribes on gaming matters that involved greyhound dog racing tracks?

Answer. No.

Question. I promised no more parentheticals, but long pauses are good, because it means I am eliminating things from the questions and makes things go faster.

Answer. That is okay.

Question. So I will pause for a moment.

Answer. Do you want this back?

Question. Actually, the housekeeping part of this is, we will ask for it back. If you want to keep it for now, it is probably best in case we go back and refer to anything.

I have given Mr. Schneider a document which has been marked TS-2, and it is a—I should not have done what I just did, because I have given you a copy that is highlighted, but it is probably easier for you. Pretty much everything on the right-hand side of the page is highlighted. It refers to getting report from—

Mr. KNIGHT. Do you have another copy of that?

Mr. WILSON. I am do, I am sorry.

[Schneider Deposition Exhibit No. TS-2 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. It is a handwritten note that is difficult to read, but it refers to, "getting report from Tom Synder, who talked to President re status of matter reporting to David Mercer, Tom Corcoran, call to John Sutton, at Harold Ickes office." Bearing in mind these are not your office and you may not have ever seen this before, have you ever seen this document before?

Answer. No.

Question. Do you have any knowledge that was obtained subsequent to May 16 of '95 about Mr. O'Connor telling other individuals about your meeting at the Mayflower Hotel with the President and Mr. Ickes?

Answer. Yes, I do.

Question. And what do you know about that?

Answer. There is a civil lawsuit that is relating to this matter, and I was deposed in that lawsuit, and in the deposition the attorney was asking me questions about the matter, and he had previously deposed and discovered various documents from Pat O'Connor, so he was relating these things and was reading me various excerpts from different documents about how Pat O'Connor had characterized what had gone on and interpreted what had gone on, and was asking me to essentially verify or disabuse these characterizations. So, prior to 1997, no.

Mr. YEAGER. I think you have testified to this before, but just to make it absolutely clear, when you talked to the President, it was not about the status of the Hudson Dog Track matter?

The WITNESS. That is right. That is correct.

Mr. WILSON. I have given Mr. Schneider a document which has been marked Exhibit TS-3. It is not a single document, it is a small packet of documents that pertain to a fund-raising event that was held at Mr. Schneider's house on July 13, 1995.

[Schneider Deposition Exhibit No. TS-3 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. If you could take just a moment to flip through these pages.

Answer. We were looking for these documents. I am glad they came to me.

Question. I expect we will receive no thanks for compiling them.

Answer. Actually, we were looking for them and couldn't find them.

Question. Do you know whether the White House Communications Agency was ping—first of all, I don't want to establish too much foundation here. Is it correct say on July 13, 1995, a fund-raiser was held at your house?

Answer. Yes.

Question. And that you had attended and the President attended the fund-raiser?

Answer. Yes.

Question. Are you aware of the White House Communications Agency taping various parts of this fund-raising event?

Answer. They are not the people that take still photographs; right?

Question. They are not. They have control of some still photographs that are ken, but they do audio, visual.

Answer. Okay. I know that they were there for the audio. There were people taking still photos. Until the Washington Post article of November 21st, we were unaware of the fact that anybody was taking any videos.

Question. Have you reviewed the video that was taken of this event prior to day?

Answer. No. Is it possible to get copies? Sorry.

Question. I am the wrong person to ask, actually, on that front, but fair enough.

Answer. For my kids, I would like to document it. Sorry.

Question. Well, I will make no representations on the record. Was the—

Mr. YEAGER. Just so the answer is clear, you are not aware that the White House Communications Agency took videos?

The WITNESS. I am not aware that they took videos, and I have not seen them, and I do not have them in my possession, and I would like to get a copy.

EXAMINATION BY MR. WILSON:

Question. Did the Hudson Dog Track matter, that which we are roughly referring as the Hudson Dog Track matter—was it mentioned at any time during that night?

Answer. No, absolutely not.

Question. If you would refer to the second to the last page of the copies you have, which is a seating arrangement, one of the people listed—it is cut off on the left-hand side, but it appears to be Jamie Gorelick, spelled incorrectly. But did Ms. Gorelick attend this event?

Answer. She did. She didn't sit there. She is an old friend of mine from college, and she arrived late, and it was thought to be indiscreet to have an empty seat at the President's table, so she was bumped and sat at an outer table.

Question. And who was seated in her place?

Answer. I am trying to remember. That is why we were looking for this material. Mr. KNIGHT. Do we have any photographs that would assist? Were they taking photographs there?

The WITNESS. The White House photographer took photographs of the table. So is in the photographs.

Mr. WILSON. I don't. There is a videotape. I imagine somebody knows the people—

The WITNESS. I would recognize the people, because they were friends.

[Schneider Deposition Exhibit No. TS-4 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I have provided Mr. Schneider with a document that has been marked 3-4, and it again is an entry from Mr. O'Connor's daytimer, and I am going to refer to just one entry in this daytimer. At the very bottom of the entries, it says, "inner, Al Gore discussed"—or "disc"—"with Peter Knight and David Strauss."

Did Mr. O'Connor ever discuss with you any meetings that he may or may not have had with either the Vice President or Peter Knight or David Strauss?

Answer. About this matter?

Question. About the Hudson Dog Track matter, yes.

Answer. No.

Question. Were you aware of any contacts that either Mr. O'Connor had or anybody from the O'Connor & Hannan firm had with the Vice President, Peter Knight, David Strauss?

Answer. No.

Mr. WILSON. I have given Mr. Schneider a document which has been marked Exhibit TS-5, and it is two pages, again, from Mr. O'Connor's daytimer. The first page dated May 5th, and the second page is dated May 12th. The first page refers to number of things.

In particular, I am looking at a section that reads, "Indians-50 DNC-Larry Kitto, Committee to Reelect."

Then underneath that, there is a number that says, "3, Committee to Reelect, briefing - May 9th," a word I am not entirely certain of, "May 18, \$5,000," and then underneath that, a dollar sign, 50; and then some other entries that also have number figures.

On the second page, the Friday, May 12 entry, on the "to do" side of Mr. O'Connor's calendar refers to, "Call Tom Schneider (see May 5th)."

[Schneider Deposition Exhibit No. TS-5 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. This is a long-winded question, but I will finally get to it, and that is, did Mr. O'Connor call you at any time and discuss any contributions from either the O'Connor & Hannan firm or from Indian tribes that were related to the Hudson Dog Track matter?

Answer. No. We talked about contributions from O'Connor & Hannan, but that was not related to the dog track. I solicited my partners for my fund-raiser, rather not very successfully.

Question. Do you know whether the reference to "see May 5th" on the calendar, and then the different entries here—do you recall discussing any of the entries from the May 5 calendar with Mr. O'Connor?

Answer. Well, he had said that he had talked to Harold Ickes about this and that he was following up with Harold Ickes to me.

Mr. YEAGER. On this date?

The WITNESS. No, he didn't give me dates.

Mr. YEAGER. So do you know if this conversation took place on the 5th?

The WITNESS. He talked to me early in May, and he said that he had, before our conversation—he said that he had talked to Harold Ickes about the dog track and had asked for his help, and that was the basis for his asking me if I could intervene with the White House.

I don't remember—looking at this, I don't remember him mentioning Bruce Lindsey. He wouldn't have talked to me about Don Fowler, because I don't know Don Fowler. And it was very much within the White House. So—

Mr. YEAGER. These are Patrick O'Connor's notes. There is no reason why you have to make sense of them. If they refresh your recollection.

EXAMINATION BY MR. WILSON:

Question. Right.

Answer. He just said he had talked to Harold Ickes.

Question. Aside from Mr. Ickes, do you have any recollection of discussions of any of the matters that are contained in this memo? For example, there is a notation "50 DNC." I make no representations as to what this means, but does this refresh your recollection as to anything that occurred in a phone conversation, if you did have a phone conversation?

Answer. Not in the phone conversation. I know what the "50 DNC June 19th" means.

Question. What does that mean?

Answer. What they were doing is going around trying to enlist donors, leadership donors, to—and they had told people that they wanted them to raise \$50,000 by June 19th.

Question. Do you know whether—

Answer. There weren't any events scheduled.

Question. Do you know whether any of the tribes who were in the coalition of tribal opponents to the Hudson Dog Track did make any financial contributions to the DNC?

Answer. No. Again, I will go back to be very precise about it. In my deposition in the civil suit, they raised that and they mentioned that they had made donations. At that point in time I said that I did not know it. But to be precise today, I am now aware of the fact that they did make donations, because in this deposition 2 months ago I was told that they did not.

Question. It is correct to say, 1995 you did not—

Answer. No, I didn't.

Question. The same question again, and I should have limited myself. But to your knowledge in 1995, as a limitation, were you aware of any contributions made by any of the Indian tribes opposed to the Hudson Dog Track to what is referred to here as the Committee to Re-elect?

Answer. No.

Mr. YEAGER. If I might interject a clarifying question, you said that you were familiar with contributions in connection with June 19th. Do you have any reason to believe that Patrick O'Connor or any lawyers at O'Connor & Hannan engaged in effort to raise money in connection with the Hudson Dog Track decision?

The WITNESS. No.

Mr. YEAGER. Do you know what Patrick O'Connor meant when he listed these items under the header "Hudson Dog Track" on this document?

Mr. YEAGER. No. I know the bottom reference is that the Committee to Re-elect some organizing meetings, essentially a steering committee organizing meeting, and they had set targets for people to try to raise \$50,000 by June 19th. There were events. They wanted to get commitments.

The rest of it, I don't know.

Mr. YEAGER. Do you know if the Committee to Re-elect for the 1996 campaign looked about the Hudson Dog Track application or that was part of their activity?

The WITNESS. Not to my knowledge. I never heard it. I never heard of any such reference.

Schneider Deposition Exhibit No. TS-6 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I am giving Mr. Schneider a document which has been marked TS-6, and, in addition, another one of the calendar entries, Daytimer entries, for Mr. O'Connor. There is a reference—it states "To Tom Synder briefing him on problem; fax to Snyder; call the DNC."

Do you recall any briefings or discussions you had with Mr. O'Connor that raised at might be termed a "problem" in respect to the Hudson Dog Track matter?

Answer. What I remember is the initial telephone call in early May in which he outlined what he saw, what the issue was, and he asked for my help. Other than that, I don't remember.

The fax to which they refer here was the one we mentioned earlier that I do not have a record of. I don't remember seeing it. When I had my deposition in the civil suit, they gave me a copy of the fax, and that was the first time I remember seeing

The fax was received in our offices in Washington, D.C. It had been sent from Minneapolis by Pat O'Connor, and is in various places in the files, and in none of those places is it attached to the cover sheet, so we suppose that maybe it had gotten separated.

But I didn't remember seeing it, which is not to say that I didn't see it. I just don't remember seeing it.

Question. Now, aside from the contacts that we have discussed today, do you know any other contacts between any O'Connor & Hannan personnel and Harold Ickes?

Answer. No.

Question. Do you know of any contacts between any O'Connor & Hannan personnel and Leon Panetta over the Hudson Dog Track matter?

Answer. No.

Question. Do you know of any contacts between any O'Connor & Hannan personnel and either the President or Vice President?

Answer. No. You are talking about other than what you have shown me today?

Question. Other than what we have discussed thus far.

Answer. No. No.

Question. And again, other than what we have already discussed so far in our review of the documents that we have been talking about, do you know of any contacts between any O'Connor & Hannan personnel and Department of the Interior personnel?

Answer. No.

Question. Were you ever in any discussions during which the political affiliation of any of the proponents of the Hudson Dog Track was raised?

Answer. You mean in 1995?

Question. In 1995.

Answer. No.

Question. Were you ever in any discussions in 1995 during which Governor Thompson's position or purported position on the Hudson Dog Track issue was discussed?

Answer. Definitely not.

Question. Were you ever in any discussions in 1995 during which was discussed the political affiliation of the Minnesota tribes and Wisconsin tribes who were in support of the approval of the Hudson Dog Track?

Answer. No.

Mr. WILSON. I didn't meet my 1-hour deadline. I apologize. That is all I have for right now.

The WITNESS. Mr. Yeager interrupted a couple of times, so you wouldn't have gotten done anyhow.

EXAMINATION BY MR. YEAGER:

Question. Thank you, Mr. Schneider, for coming in today voluntarily on behalf of the Minority. I regret that you were put to the trouble. We recognize that you came in all the way from Chicago. We appreciate that, again.

Answer. You are welcome.

Question. Some on our committee have suggested that there is a connection between funds raised at a fund-raiser held at your home and a decision by the Department of the Interior to deny the application in connection with the Hudson Dog Track. Do you have any reason to believe that there is any connection between funds raised at your event and the Department of the Interior's decision?

Answer. I have no reason at all, and until this year, I didn't know that the two had any relationship to each other.

Question. You did not talk to the President about this matter at that fund-raiser?

Answer. No.

Mr. KNIGHT. About this matter, the Hudson Dog Track matter?

Mr. YEAGER. Yes. This is the July fund-raiser.

The WITNESS. Right.

EXAMINATION BY MR. YEAGER:

Question. To your knowledge, did anybody else at your fund-raiser talk to the President about the Hudson Dog Track?

Answer. I was next to the President the entire evening, from the moment he got out of the car until he left, and no one did.

Question. So in your view, there is absolutely no basis to the allegation that there is a connection between your fund-raiser and the Interior Department's decision?

Answer. There is no relationship between the two that I have any knowledge of or could imagine.

Question. You have testified that you were of counsel and previously a partner in the firm of O'Connor & Hannan.

Answer. Right.

Question. Were you aware of any strategy or plan for Patrick O'Connor or other lawyers at that firm to raise money in connection with this decision by the Department of the Interior?

Answer. No, I was not. I had been soliciting partners in relation to my fund-raising event, and I found out in September of 1997 that they had done a very good job of raising money, but not for my event. So no, I was unaware of any strategy of that sort.

Question. All right. Thank you again for coming. I have no further questions.

EXAMINATION BY MR. WILSON:

Question. Did Harold Ickes attend a fund-raiser at your house?

Answer. No.

Question. Did Don Fowler attend the fund-raiser at your house?

Answer. No.

Question. On behalf of the members of the committee, thank you very much.

Mr. KNIGHT. Can I just make one comment?

Mr. WILSON. Absolutely.

Mr. KNIGHT. It is simply this. I told Mr. Schneider at the deposition that he could accept as true the representations made by Mr. Varga, who was the attorney at the time, for purposes of answering the deposition. Other than what he was told, he doesn't know whether they were true or false, but he could—I think that is what is being relayed here, and that it is perfectly proper that he accepted those representations, and that was the basis on which he answered.

I just wanted to make that clear.

Mr. WILSON. I appreciate that. I do sincerely appreciate the cooperation and the ease with which this has gone forward. Thank you very much.

Off the record.

[Whereupon, at 4:08 p.m., the deposition was concluded.]

[The exhibits referred to follow:]

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483

FED ID NO 41-C825540

INVOICE

June 27, 1995

32594-0001

St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Hudson Project - Nature of Matter: Dog Track to

Professional services rendered through May 31, 1995

Report to Tom Corcoran regarding Friday meeting at D.N.C.
Telephone conference with D. Mercer regarding appointment at White House with Harold Ickes; Finish briefing of T. Corcoran on Friday D.N.C. meeting.
Calls to D.N.C. regarding White House appointment; Long distance telephone conference with Larry Kitto.
Telephone calls to D. Mercer at D.N.C.; Report to Larry Kitto regarding Chairman Fowler's memorandum to Harold Ickes; discussions with P. O'Connor and L. Kitto regarding delivery of materials to White House as requested by D. Fowler, DNC Chairman; discussions regarding meeting with White House Deputy Chief of Staff H. Ickes; discussions with F. Ducheneaux; discussions with aide to Senate Indian Affairs Committee; discussions with Department of Interior officials.
Draft letter to Harold Ickes at White House setting forth reasons to approve creating trust lands for Casino at the Hudson, WI dog track; Discussion with Larry Kitto checking on facts set forth in Ickes letter.
Discussions with P. O'Donnell; review memorandum for White House Deputy Chief of Staff H. Ickes; discussions with P. O'Connor; letter and memorandum to H. Ickes; memorandum to L. Kitto; memorandum to L. Taylor; memorandum to DNC Chairman Fowler and D. Mercer; discussions with F. Ducheneaux; memorandum to P. O'Connor; discussion with Tom Corcoran and editing letter to Harold Ickes; Arranging distribution of letter.
Discussions with F. Ducheneaux; discussions with L. Kitto; discussions with BIA officials; discussion with Tom Corcoran; Long distance telephone conference to Tom Snyder briefing him on problem; Fax to Snyder; Call to D.N.C.

AA 0000270

O'CONNOR & HANNAN

THIS AND PREVIOUS INVOICES SUBJECT TO DISCOUNTS THIS INVOICE ONLY BE SUBMITTED AT A LATER DATE

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483

FED ID NO 41-0825580

INVOICE

27, 1995 32594-0001
on Project - Nature of Matter: Dog Track to

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Long distance discussion with David Mercer regarding follow-up with Harold Ickes; Discussion with Tom Corcoran regarding follow-up with congressional delegations; discussions with P. O'Connor regarding White House involvement in our case at Interior Department; discussions with L. Kitto; review materials from L. Kitto and P. O'Connor; memorandum to L. Kitto.
Meeting with tribal representatives; discussions with F. Ducheneaux; discussions with partners regarding White House actions to stop Hudson project; discussions with BIA officials; discussions with L. Kitto; call to Larry Kitto regarding hearing advising the tribes and Minnesota and Wisconsin delegations regarding my letter to Harold Ickes; Call to David Mercer to get update.
Telephone conference to D. Mercer of D.N.C. regarding status report on meeting with Harold Ickes; Call to Tom Corcoran regarding sending accountant's report to Harold Ickes; discussions with P. O'Connor regarding Deputy White House Chief of Staff H. Ickes; discussions with L. Kitto; memorandum to key White House aides regarding client issues.
Review of Peat Marwick report; letter and memorandum and Peat Marwick report to H. Ickes, Deputy White House Chief of Staff; discussions with White House aides; memorandum to L. Taylor; memorandum to L. Kitto for MIGA; report to L. Kitto regarding President Clinton's comments about "our friends" and racetrack issue; get report from Tom Snyder that he talked to President Clinton regarding status of matter. Report to D. Mercer, Tom Corcoran; Call to John Sutton at Harold Ickes' office; Report to Larry Kitto.
Discussion with David Mercer regarding delay in getting appointment with Harold Ickes.
Meeting with Frank D. and review Wall Street Journal article on Delaware North; Meeting with Tom Corcoran and draft proposed letter to be sent to Minnesota delegation to Harold Ickes regarding Hudson dog track; Long distance telephone conference with Larry Kitto arranging meeting with Minnesota delegation on Wednesday, May 24 in

AA 0000271

O'CONNOR & HANNAN

THIS AND PREVIOUS EDITIONS COLLECTED IN THIS INVOICE WILL BE DATED AT A LATER DATE

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483

FED ID NO 41-0825580

INVOICE

June 27, 1995 32594-0001
Hudson Project - Nature of Matter: Dog Track to

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Washington, D.C.; Dinner meeting with David Mercer of the D.N.C.; Report on cause of delay in meeting with Harold Ickes; discussions with P. O'Connor regarding White House strategy and action with Deputy Chief of Staff H. Ickes; discussions with L. Kitto; telephone conference with L. Kitto and P. O'Connor; discussions with P. Taylor of Ducheneaux and Taylor Associates; draft letter for Minnesota Congressional Delegation and send to H. Ickes of White House staff; discussions with P. O'Connor and L. Kitto regarding next meeting, plans and actions.

Preparation of letter for Minnesota Congressional Delegation to send White House aide Harold Ickes, discussion with Pat O'Connor, discussion with Larry Kitto, discussion with T. Krazewski of Ito-Chunk Nation, report to Larry Kitto; meet with Larry Kitto and Terry MacAuliffe explaining our story.

Trip to the Committee to Re-Elect; (Terry MacAuliffe); Conference with Chairman of National Finance Committee asking him to agree to call Harold Ickes and arrange appointment for Indians; Dinner with Al Gore; Conference with Peter Knight and David Strauss regarding Indian problem regarding Hudson dog track; discussion with Larry Kitto, discussion with Pat O'Connor, delivery of proposed letter by Minnesota Congressional Delegation to Larry Kitto and aides to Congressman Wellstone, Congressmen Oberstar, Vento and Sabo, preparation of draft letter for Senators Daschle and Kerrey for correspondence with White House Deputy Chief of Staff H. Ickes, memorandum to Larry Kitto, discussion with BIA officials.

Discussion with Pat O'Connor, discussion with Larry Kitto, discussions with Pat O'Connor with aide to Vice President Gore, discussion with aide to Clinton/Gore Re-election Committee, finalize letters for Senators Daschle and Kerrey to send to Interior Secretary Babbitt, draft of letters for tribal leaders to send to Secretary Babbitt; reporting to Tom Corcoran on discussions with Peter Knight, David Strauss at Al Gore dinner; Report on meeting with Terry MacAuliffe.

AA 0000272

O'CONNOR & HANNAN

TAXES AND EXPENSES INCURRED SUBJECT TO BE PAID BY THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483

FED ID NO 41-0825580

INVOICE

27, 1995 32594-0001
n Project - Nature of Matter: Dog Track to

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Discussion with E. Ducherneau, discussions with aides to House Natural Resource Committee, discussions with T. Glidder, majority counsel to House Subcommittee on Native Americans, discussion with aide to Congressman D. Young, discussion with aide to Congressman Gallegly.
Discussion with Larry Kitto. Discussion with Pat O'Connor. Discussion with David Strauss, aide to Vice President Gore. Memorandum to F. Ducheneaux. Discussion with F. Ducheneaux regarding Delaware North.
Long distance discussion with Tom Corcoran regarding Milbur Witz Journal article regarding dog track; Read fax; memorandum from T. Krazewski of Ho-Chunk Nation. Memorandum to Don Fowler/David Mercer. Memorandum to Tom Collier. Memorandum to H. Ickes/John Sutlon. Memorandum to L. Taylor. Discussion with Larry Kitto. Discussion with Pat O'Connor. Meetings, discussions and correspondence involving L. Kitto, client, agency representation and Minnesota Members of Congress and their staff assistants on this matter.

Total Services: \$7,500.00

AA 0000273

O'CONNOR & HANNAN

DATE AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE MAY BE SUBMITTED AT A LATER DATE

SUITE 800
1819 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483

FED ID NO 41-0825580

INVOICE

June 27, 1995 32594-0001 *****
Hudson Project - Nature of Matter: Dog Track to

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Disbursements:

Photocopies	111.20
Long Distance Telephone	40.08
Postage	3.12
Facsimiles	88.50
06/27/95 LARRY KITTO - expense for airfare, hotel, parking, meals, etc. (4/18-5/24/95)	1380.00
Total Disbursements:	\$1,622.90
Total Services and Disbursements:	\$9,122.90

*****Statement of Account*****

BALANCE DUE FROM PREVIOUS STATEMENT	7783.60
LESS PAYMENT(S)	(7783.60)

BALANCE FORWARD	.00
CURRENT INVOICE	9122.90

BALANCE DUE	\$9,122.90

AA 0000274

O'CONNOR & HANNAN

COSTS AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

— PAGE 420 SHEET 7 — *NTG Depo 0/29/14* *SCNHC* PAGE 422

1 about -- you're one of the lobbyist here. Lobbyists
2 report back who says what to whom and so on. And I'm
3 asking you whether or not you became aware that there
4 had been such meetings in the course of your lobbying
5 effort.
6 MR. PENTELOVITCH: I'm going to object to
7 the form of the question. Go ahead and answer.
8 A I don't remember.
9 C Mr. Killo, wouldn't contacts with the White House be
10 something you'd take significant to your lobbying
11 effort?
12 A Sure.
13 D And it's your testimony that you don't remember that
14 even happening?
15 A I don't remember.
16 D Well, Mr. Killo, can you testify, to your
17 recollection, that it did not happen, that there were
18 no such meetings between opponents of the Hudson
19 casino and officials of the White House?
20 A No.
21 D Okay. Who is Tom Snyder?
22 A Tom Snyder is a past associate -- he's a friend of
23 O'Connor's and I think he's a friend of Quinn's. I
24 think. He rented some office space in the Washington
25 office at one time.

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1 A I mean that's all I recall about it.
2 Q That he would look into the issue?
3 A Yeah.
4 D Do you recall whether the President indicated
5 something more substantive than just look into it, in
6 fact that he wanted something done?
7 MR. PENTELOVITCH: Well, I'm going to
8 object to the question because you've not
9 established that Mr. Killo talked to the
10 President himself.
11 MR. VARDIA: No, I'm going -- I do not
12 assume that Mr. Killo talked to the President.
13 I'm trying to solicit the hearsay with respect
14 to what Mr. Snyder's conversation was as part of
15 the discovery proceeding.
16 MR. PENTELOVITCH: Right. I understand.
17 The problem with your question is that you're
18 really not doing anything to lay down if this is
19 single hearsay, double hearsay, triple hearsay,
20 how he heard it, who he heard it from. I mean
21 you've really made no record on that, so --
22 MR. VARDIA: No, I understand that.
23 MR. PENTELOVITCH: Okay.
24 MR. VARDIA: It's hearsay. I probably can't
25 get it in anyway, but I do need to take it in.

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— PAGE 421 —

1 D Now, he wasn't officially part of the lobbying
2 effort, was he?
3 A No.
4 D But he did in fact make contacts on behalf of the
5 lobbying team, didn't he?
6 A I think Tom Snyder had a conversation with the White
7 House, yes. He did have, yes.
8 D Okay. And when you say the White House, you're
9 talking about President Clinton?
10 A President Clinton, that's true.
11 D Okay. So Mr. Snyder had a conversation with
12 President Clinton. And I assume that got reported
13 back, didn't it?
14 A Sure.
15 D That would be important to your lobbying effort,
16 something you'd want to know about it, wouldn't it?
17 A Sure.
18 D Okay. Why don't you tell us what the substance of
19 that conversation was as reported back to you.
20 A What was reported back to me was that Snyder talked
21 to the President and the President said he would look
22 into the issue.
23 MR. PENTELOVITCH: I'm just going to
24 retroactively object to that question as not
25 being very definite.

421

— PAGE 423 —

1 its logical conclusion so that I can use it for
2 further discovery.
3 D Well, let's go back a minute and you can answer a few
4 questions about that. Did Mr. O'Connor talk directly
5 to Mr. Snyder?
6 A I don't know.
7 D Are they friends?
8 MR. PENTELOVITCH: Objection, asked and
9 answered.
10 D Tom Snyder and Mr. O'Connor, they're friends, aren't
11 they?
12 A I would assume that. I've never met Mr. Snyder so I
13 don't know.
14 D Did you speak to Mr. Snyder directly about his
15 conversation with President Clinton?
16 A I've never met or talked to Mr. Snyder. Wouldn't
17 know what he looked like.
18 D How was the information with respect to Mr. Snyder's
19 conversation with the President communicated back to
20 you?
21 A Through Mr. O'Connor.
22 D So do you know if Mr. O'Connor talked to Mr. Snyder?
23 A I'm assuming he did. You'll have to ask
24 Mr. O'Connor.
25 D Did Mr. O'Connor say anything to you to indicate that

423

TUESDAY . . . 16
MAY 16, 1995

**TUESDAY
MAY 16, 1993**

WA 20 - Day 136, 229 left

Ref Report to President
Call Tom Seymour

REDACTED
MATERIAL

"Hi Call John Sutton's"

46 call Kette Synder
47 call Kette Synder May 23 - Denver

EXPENSE REIMBURSEMENT RECORD:

EXPENSE REIMBURSEMENT RECORD:

REDACTED
MATERIAL

EXHIBIT
TS-2

OC 000077

on every Friday - Wednesday Day
 will report from Thursday
 that he called the Purse I
 visited he asked me directly
 regarding to Davis' family
 from Green, Cal. to
 John to John Slatons, at
 - have 2 other Officers, having
 to have with

7:30 pm YOU arrive and enter Schneider home -
meet Tom and Cynthia Schneider and their children in library
Then proceed to greet steering committee (12 people) across the hall

7:45 pm YOU are announced offstage into tent ("Hail to the Chief" is played) then
proceed to your seat

You are seated at table # 2

8:25 pm Tentative program begins:

Cynthia Schneider welcomes guests and introduces Tom Schneider
Tom Schneider gives remarks and explains Q&A forum then
introduces YOU
YOU deliver remarks and take Q&A

9:30 pm YOU work ropeline out and depart

VI. REMARKS

Your remarks are provided by the speech writer. A majority of your program is Q&A.

Family Greeters(Library)

Tom Schneider
Cynthia Schneider
Tommie(daughter)
Sam(son)

Steering Committee list(living room)

Tom and Cynthia Schneider
John and Ann Schneider(Tom's brother and niece)
John and Anne Schneider(Tom's father and mother)
Bob Barrie
Julie Barrie
Paula Barrie
Al Dwoskin
Phil Veveer
Gerry McGowen
-

*list incomplete

CGRO-013395
Reg. 5/28/97

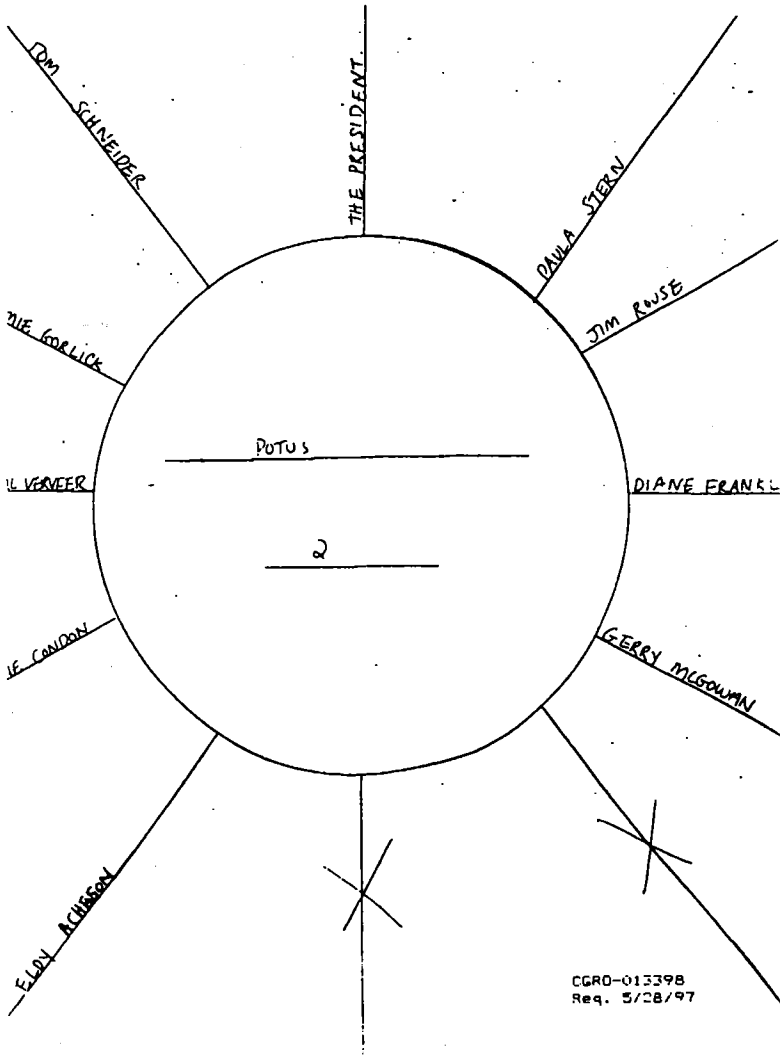
The President's Table

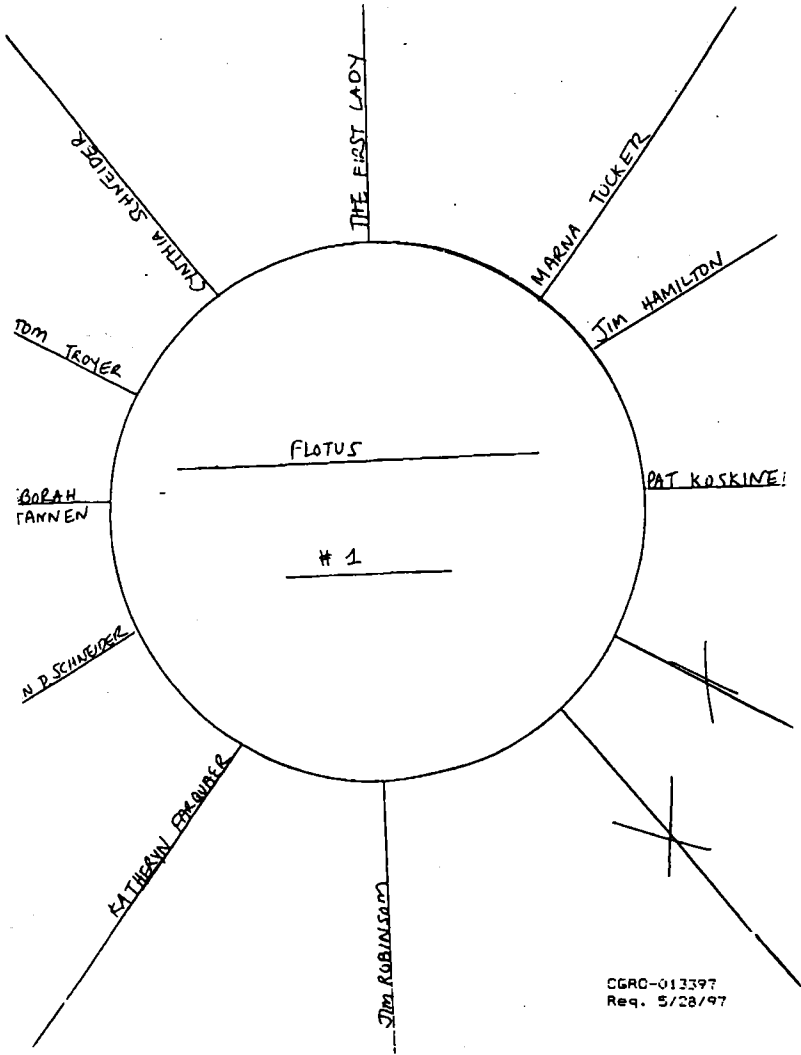
Tom Schneider
 Jim Rouse
 Phil Verveer
 Gerry McGowan
 Jane Condon
 Eldy Acheson
 Jamie Gorelick
 Paula Stern
 Diane Frankl

Tentative First Lady's Table

Cynthia Schneider
 Tom Troyer
 Deborah Tannen
 John Schneider
 Kathryn Earquar
 Jim Robinson
 Pat Koskinen
 Jim Hamilton
 Marna Tucker

New Material





White House Releases More Tapes of Political Events

One Shows Fund-Raiser a Day Before Administration's Controversial Rejection of Indian Casino

By Guy Gugliotta
and George Lardner Jr.
Washington Post Staff Writers

The White House yesterday released tapes of 24 political events attended by President Clinton and Vice President Gore during their 1996 reelection campaign, all but two of them campaign fund-raisers.

Unlike the events shown in tapes submitted earlier to the Senate Governmental Affairs Committee, none of the events in the newly released tapes took place in the White House, and the vast majority were purely campaign fund-raisers where there was no question of wrongdoing by Clinton or Gore in making for money. "We didn't find anything that was all that interesting," said Paul Clark, spokesman for the committee, which had subpoenaed the tapes. The committee has now received tapes of 238 events featuring Clinton, Gore or both.

Included in the tapes was one from a July 13, 1996, fund-raiser at the Maryland home of Tom Schneider, partner of the chief lobbyist for a group of Indian tribes that were trying to block plans by rival tribes to open a casino in Hudson, Wis. The Interior Department rejected the casino plan the day after the fund-raiser.

White House special counsel Leroy J. Dennis said the administration regarded only two of the tapes as "directly responsive" to the committee's subpoena: a Dec. 8, 1996, Mayflower Hotel event attended by businessman Roger Tamura and a May 18, 1996, Sheraton Washington Hotel banquet that may show a fleeting glimpse of Yuh Lin "Charlie" Trie. Tamura and Trie are key figures in the administration's 1996 fund-raising scandals.

Dennis said the White House submitted the 22 other tapes "in a spirit of cooperation," but withheld 43 others, because "they were not about fund-raising." Before releasing further tapes, he added, the White House wanted to establish "reasonable limits" on compliance, not engage in "an open-ended fishing expedition."

Clark said, "We're going to work with the White House to get copies of those tapes we need." Dennis said the withheld tapes show state Democratic Party and congressional fund-raisers, policy-oriented briefings for donors and miscellaneous events unrelated to fund-raising. None of the events took place in the White House.

The fund-raiser at Schneider's Sandy Spring home produced \$430,000. Schneider, a longtime friend of Clinton's, is also the law partner of Patrick J. O'Connor, a prominent Washington lobbyist who represented the tribes opposing the Hudson casino.

Schneider was mentioned in a May 1996 memo by Ann Jablonski, a lobbyist for the St. Croix Chippewa, one of the opposing tribes, as having spoken to Clinton about the proposal before it was rejected.

The Jablonski memo said Schneider "has confirmed in a casual conversation with Clinton that Clinton is aware of the Hudson dog track issue." She also described how O'Connor had approached Clinton about the casino at a fund-raiser in Minneapolis on April 24, 1996.

According to court records, Clinton told Bruce Lindsey, one of his top aides, to hear O'Connor out and, as Jablonski put it, Lindsey "decided it

was a problem [White House deputy chief of staff Harold] Ickes would/could/should take care of."

Schneider has said he did not remember talking to Clinton about the casino, but did tell Ickes at a reception that "this is something you ought to pay attention to."

When the Interior Department rejected the Hudson casino plan on July 14, Interior Secretary Bruce Babbitt told an old friend, Paul F. Eckstein, that Ickes had demanded a decision that day. Babbitt has since said he made the story up to get Eckstein, who had been hired by the losing tribes, out of his office.

24
 WEDNESDAY
 MAY 24, 1995
 APPOINTMENTS & SCHEDULED EVENTS

TO BE DONE TODAY (ACTION LIST)

WEDNESDAY
MAY 24, 1995
DIARY AND WORK RECORD

TIME	DATE	DAY	MONTH	YEAR	HOUR	MIN	SEC	MILLISEC	NANOSEC	PICOSEC	FEMTOSEC	ATTOSEC	ZEPTOSEC	YOKTOSEC	SECTA	MINUTA	HORA	DIE	MENSIS	ANNO	SAECULUS	MILLENNIUM
8:00	5/24	WED	MAY	1995	8	00																
8:30	5/24	WED	MAY	1995	8	30																
9:00	5/24	WED	MAY	1995	9	00																
9:30	5/24	WED	MAY	1995	9	30																
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15:00	5/24	WED	MAY	1995	3	00																
15:30	5/24	WED	MAY	1995	3	30																
16:00	5/24	WED	MAY	1995	4	00																
16:30	5/24	WED	MAY	1995	4	30																
17:00	5/24	WED	MAY	1995	5	00																
17:30	5/24	WED	MAY	1995	5	30																
18:00	5/24	WED	MAY	1995	6	00																
18:30	5/24	WED	MAY	1995	6	30																
19:00	5/24	WED	MAY	1995	7	00																
19:30	5/24	WED	MAY	1995	7	30																
20:00	5/24	WED	MAY	1995	8	00																
20:30	5/24	WED	MAY	1995	8	30																
21:00	5/24	WED	MAY	1995	9	00																
21:30	5/24	WED	MAY	1995	9	30																
22:00	5/24	WED	MAY	1995	10	00																
22:30	5/24	WED	MAY	1995	10	30																
23:00	5/24	WED	MAY	1995	11	00																
23:30	5/24	WED	MAY	1995	11	30																
24:00	5/24	WED	MAY	1995	12	00																

EXPENSE & REIMBURSEMENT RECORD:

DATE: 5/24/95 TIME: 12:00 PM

LOCATION: [REDACTED]

DESCRIPTION: [REDACTED]

AMOUNT: [REDACTED]

CURRENCY: [REDACTED]

REMARKS: [REDACTED]

EXHIBIT

TS-1

OC 000032

[illegible]

ATTORNEY'S
EYES ONLY

[The deposition of Heather Sibbison follows:]

EXECUTIVE SESSION
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: HEATHER SIBBISON

THURSDAY, JANUARY 15, 1998

The deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 10:00 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Barbara Comstock, Chief Investigative Counsel; James C. Wilson, Senior Investigative Counsel; Rae Oliver, Investigative Counsel; Kenneth Ballen, Minority Chief Investigative Counsel; Michael Yang, Minority Counsel; and David Sadkin, Minority Counsel.

For MS. SIBBISON:

TIMOTHY S. ELLIOTT, ESQ.
Deputy Associate Solicitor-General Law
Department of the Interior
1849 C Street, N.W.
Washington, D.C.

Ms. COMSTOCK. On the record. Good afternoon. On behalf of the members of the Committee on Government Reform and Oversight, I thank you for appearing here today. This proceeding is known as a deposition. The person transcribing is a House reporter. She is also a notary public, and I will now request that you be placed under oath.

THEREUPON, HEATHER SIBBISON, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Ms. COMSTOCK. I would like to note for the record those who are present at the beginning of this deposition. I would also note that the only people who should be coming in here during the deposition may be some other counsel throughout, so I will attempt to make a record of who appears as they come in and out, but nobody else is permitted to come in during the deposition. Of course, Members of Congress, also, may join us.

My name is Barbara Comstock. I am the designated Majority counsel for the deposition today. I am accompanied by Rae Oliver, who is also with the Majority staff. Jim Wilson is also here with us this morning.

Mr. SADKIN. I am David Sadkin, Minority counsel, here with Ken Ballen and Michael Yang.

Ms. COMSTOCK. And the deponent today is accompanied by?

Mr. ELLIOTT. Timothy Elliott.

Ms. COMSTOCK. Who is with the Solicitor's Office at the Interior Department.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a courtroom. If I ask you about conversations you have had in the past and you are unable to recall the exact words used in the conversation, I would ask that you tell us what you do recall of that and give us the gist or substance of any such conversation to the best of your recollection. If you recall only part of a conversation or only part of an event, please give us your best recollection of those events or parts of conversations that you do recall. If I ask you whether you have any information about a particular subject and you have overheard other persons conversing with each other regarding that subject or seen correspondence or documentation about that subject, please tell me that you do have such information and indicate the source from which you have derived any such knowledge.

Before we begin the questioning, I would also like to give you some background about the investigation and your appearance here. Pursuant to its authority under House Rules X and XI of the House of Representatives, the committee is engaged in a wide ranging review of possible political fund-raising improprieties and possible violations of law. Pages 2 through 4 of House report 105-139 summarizes the inves-

tigation as of June 19, 1997, and describes new matters which have arisen in the course of investigation and also notes that these related matters that arise in the course of the investigation also are included. Also, pages 4 through 11 of the report explain the background of the investigation. All questions related either directly or indirectly to these issues or questions which have a tendency to make the existence of any pertinent fact more or less probable than it would be without the evidence are proper.

The committee has been granted specific authorization to conduct this deposition pursuant to House resolution 167, which passed the full House on June 20, 1997. Committee Rule 20 outlines the ground rules for the deposition.

Majority and Minority committee counsels will ask you questions regarding the subject matter of the investigation. Minority counsel will ask questions after Majority counsel has completed the questioning. After the Minority counsel has completed questioning you, a new round of questioning may begin. Members of Congress who wish to ask questions will be afforded an immediate opportunity to ask their questions at any time when they may be present, or when they are present, when they feel like asking questions. When they are finished, committee counsel will resume questioning.

Pursuant to the committees rules, you are allowed to have an attorney present to advise you of your rights. Actually, today you are accompanied by department counsel. Any objection raised during the course of the deposition shall be stated for the record. If the witness is instructed not to answer a question or otherwise refuses to answer a question, we would ask that you provide us the reason for that.

This deposition is considered as taken in executive session of the committee, which means it may not be made public without the consent of the committee, pursuant to clause 2(k)(7) of House Rule XI.

We will also have the deposition available. We usually have the deposition available the day after the deposition, and given that we are going to be having hearings shortly on this matter, we would ask that if you would like to review it to do that as soon as possible and we will make every effort to make it available to you as soon as possible, including we will be around this weekend if you would like to do it over the weekend. Do you have any questions before we get started.

The WITNESS. I do not.

Mr. ELLIOTT. I have a statement to make. In the past depositions the Majority counsel has attempted to get the deponents to testify that there is a cookie cutter method in making decisions in off-reservation gaming. I think it is clear from the testimony that has been given in depositions, testimony that may be adduced at future hearings, that there is no such formula for deciding off-reservation gaming issues. If there were, our computers could do that work for us and people wouldn't be necessary.

Ms. Sibbison testified for some four hours in deposition before the Senate staff. At that time, she answered all questions that they asked of her, and has provided virtually all the information of which she has knowledge about the Hudson Dog Track matter. Today she is here voluntarily. I would point out that she has laryngitis. We are therefore insisting that this deposition terminate at 5:00 p.m. this evening. In view of the fact that we arrived at the Majority staff offices 10 minutes late, if necessary, and only if necessary, I am prepared to extend and ask Ms. Sibbison to extend her voluntary time for 10 minutes beyond 5 o'clock. We will take regular breaks, and I am suggesting, but we will do so without necessarily having an agreement on it, 10 minutes at least every 90 minutes.

It is my understanding, as previously stated to me and represented to me by both counsel for the Majority and the Chairman, that you will not cover the same ground covered in the Senate deposition and you will not cover matters concerned with our ongoing litigation.

We further understand that our witnesses are not to be badgered, they are not to be asked repetitive questions if they have already answered them. If this occurs, I will object, and, if necessary, terminate the deposition before 5:00 o'clock. I have no further statement.

Mr. SADKIN. The Minority would just like to concur in Mr. Elliott's concern about the duplication of this investigation with the Senate's investigation and we hope the subject matter of this investigation will be limited to new areas.

EXAMINATION BY MS. COMSTOCK:

Question. All right. As you can tell, my voice is a little weak today, too, so I will make every attempt to get done here by 5:00 o'clock. Obviously, as with other depositions, we can't make any guarantee depending on what arises but we will make every effort to make this as brief as possible.

I am going to skip over sort of the normal preliminaries and background. Could you tell me if you met with anyone other than Mr. Elliott to prepare for this deposition today?

Answer. I am not sure what you mean by prepare, but as I understand that word "prepare," no.

Question. Did you speak to anybody else about the deposition today?

Answer. Certainly I have spoken with other people that I was being deposed today, but not about what I would be deposed about.

Question. So other than discussing I am going up for a deposition, you haven't had any discussions about this deposition, except with Mr. Elliott?

Answer. That is correct.

Question. And did you review any documents prior to the deposition?

Answer. Yes, I did.

Question. And were those documents made available to you by the department?

Answer. They are primarily documents I already had in my file. Some of them are documents that were made available by the department.

Question. Have you had any White House documents made available to you?

Answer. Yes.

Question. And do you know how those were provided to the department?

Answer. I believe in the course of the litigation, but I don't know for sure.

Question. It is the White House Counsel's Office that provided those documents?

Answer. I don't know.

Question. Have you reviewed your documents pursuant to this committee's Senate subpoenas and provided all relevant records?

Answer. Yes.

Question. Were you provided a copy of the committee's subpoena in order to review documents or how did you come to review them?

Answer. I believe I have a copy, but I was told that I needed to review my files again and I have reproduced my files on a number of occasions.

Question. Is it your practice to keep notes from various meetings on a regular basis?

Answer. Sometimes.

Question. Do you know if you kept notes from meetings that are at issue in this matter?

Answer. If I did, they would have been in my files and there are very few notes in my files.

Question. Okay. Do you recall at the time, if you did take notes in any of the meetings, notes that were not then preserved?

Mr. ELLIOTT. At what time, Ms. Comstock? At the time, you said. At what time are you talking about?

EXAMINATION BY MS. COMSTOCK:

Question. From the time you became involved in the Hudson casino matter that we are addressing here today?

Answer. I have no independent recollection of taking or not taking notes. I do, as a general matter, keep my notes when I take them and I don't throw them away, so if I had taken them, they would have been in my files, but I don't have—I don't have a clear recollection of taking them or not taking them.

Question. Okay. When you have meetings, for example, with your colleagues or with the Secretary, do you normally have a note pad where you take down notes or a steno pad, something like that?

Answer. It depends what kind of meeting it is. If it's a meeting to discuss an issue about which I already know the facts well, then I don't because we are having a policy discussion and it is not necessary. If it's a meeting on a new issue and I need to learn the facts and write down the facts so I can learn them and remember them, I might. So it depends on what sort of meeting it is.

Question. In your Senate deposition—why don't I just provide you with a copy of that. Just for the record, so we know what the witness is reviewing, it is the September 26, 1997, Senate deposition of Heather Sibbison from Senate Committee on Governmental Affairs. I just wanted you to have a copy. I think some of the questions may be general, but I just wanted you to have an opportunity to be able to review it as we go along if you need to?

Answer. Thank you.

Question. On a number of occasions in the deposition, you discussed general meetings and ongoing policy discussions you had about Indian gaming and casinos and the decision at issue in the Hudson casino matter. Do you recall in any of those policy discussions or meetings taking any notes?

Answer. No.

Question. And do you know, have you reviewed your calendars to determine when any of those meetings may have occurred?

Answer. I produced my calendar as part of all of the document productions. I confess, I have not reviewed it again. We had general gaming meetings that wouldn't show up on my calendar as Hudson Dog Track gaming meeting, we would have general status update meetings that would encompass all sorts of issues. I don't have my calendar in front of me and didn't review it before coming here so I can't answer it accurately.

Question. Okay. And do you keep your calendars then?

Answer. Yes, I do.

Question. So would you have your calendars for the 1995 time period?

Answer. Yes, I am sure I produced it though, it would be in the documents somewhere.

Question. And as for phone messages—

Answer. I don't keep those.

Question. Do you keep your e-mail on a regular basis?

Answer. In my office, it is automatically deleted after 30 days. If it is something I think is substantive and important, I print it out and keep it and keep it in my files.

Question. Do you know if you had any substantive e-mails on this topic it would have been kept in your files and you would have produced it?

Answer. If I thought it was something worth keeping, yes.

Question. Do you know if any of the hard drives at the Interior Department have been checked for e-mail on this topic in the course of discovery?

Answer. I can only speak toward the hard drive on which I am—my files are located and it has been searched.

Question. Do you have any documents in your personal possession that haven't been turned over—turned over yet in this matter?

Answer. No.

Question. Do you know of any documents that are yours that there is some type of privilege being claimed over them?

Answer. I assume in the litigation that some of the documents I had, because they were from the Solicitor's Office, would have been claimed as privileged under attorney client privilege, but I don't have an independent personal knowledge of which documents or what privilege.

Mr. SADKIN. Do you know if any have been?

The WITNESS. I don't know, no.

EXAMINATION BY MS. COMSTOCK.

Question. And I think what I am trying to get at is if there is a body of documents you now have that maybe have not been produced to us or to any other body that are privileged documents that have been not identified?

Answer. It is my belief, without me having factual knowledge, that everything I have has been produced to you.

Question. Okay. And who do you turn your documents over to after you have reviewed them?

Answer. I have turned them over to the Solicitor's Office for the purposes of the litigation, I have turned them over to the Solicitor's Office for the purposes of that Senate request and for the purposes of your request. I also turned them over to Congressional Affairs for the same purposes of the House and Senate requests.

Question. One of the things you had indicated in your Senate testimony was that it was your understanding that a decision had already been made on the subject before the lobbyists became involved. I think the record—

Mr. ELLIOTT. Do you have a particular page or citation?

Ms. COMSTOCK. Actually, it is throughout.

EXAMINATION BY MS. COMSTOCK:

Question. Okay. It's page 66, which is on the bottom. The answer is in the middle of page 66. It indicates we had made a decision before we ever had a meeting with them, meaning—right prior to that there is a discussion of the Minnesota delegation giving us a hard time. The records reflect there was a meeting in early February of '95. Was it your understanding that a decision on the Hudson casino matter had been made prior to February 8, 1995?

Answer. Actually, I would like to make a statement though. When I was deposed for the Senate, I had not reviewed the documents, except for a few documents very quickly. Having reviewed the documents more carefully before this deposition, I

think I have a better understanding of the time line. To answer your question, I was not involved in the Minnesota delegation meeting. It is my understanding, without having personal knowledge, that the people who attended that meeting, that it was a new issue to them, and that what I have here is chronologically incorrect.

Question. Okay. Could you then correct the record and explain to us your understanding of what the chronology was and when the decision was made, to the best of your understanding now?

Answer. Well, let me take your question in 2 parts, if I understand it correctly. First of all, in terms of when the decision was made, there was no specific date on when the decision was made. It evolved over a long period of time and a long series of meetings. In terms of, if what you mean by the decision is what is actually in the July 14th letter that Mike Anderson signed, when you are talking about the decision in terms of whether or not we were predisposed to take the land into trust, I think what I recall, and I can't speak for other people, but my recollection is that everybody had a gut feeling that it was not a good idea to take it into trust and that there were too many problems with it and I don't remember anybody ever, during this time period when it came to the department late in '94 through July, when we issued the final decision, I don't recall anybody saying, gee, maybe we ought to take it into trust, and that time period was used to review the application and talk about its merits and demerits and to talk about the legal and policy underpinnings that underlied why we all had a negative gut reaction about it.

Question. Can you define who the "we" is?

Answer. Everybody who worked on gaming. Mike Anderson, me, George Skibine, Bob Anderson, John Duffy, Tom Hartman, to the degree that he was involved, although he was only minimally involved, Tom Collier. I may be forgetting people, I don't know. There are a lot of people who work on gaming issues at the department.

Question. Would that include Ada Deer?

Answer. Yes, Ada—I never personally spoke to Ada about it, but Mike Anderson was her deputy, and I assume that he kept her up to speed on it.

Question. Was it your understanding that she had a negative gut reaction to this Hudson casino—?

Answer. She never—

Question [continuing]. Application?

Answer. She never expressed anything to the contrary, and so many people who work on gaming issues are part of her staff that—no, I never had a personal conversation with her about it, but between Mike Anderson and George Skibine, Hilda Manuel, another person who was aware of the decision making process, I would find it extremely unlikely that she had a differing view because she never expressed it and a good deal of her staff was working on the issue.

Mr. SADKIN. Do you know if she expressed any view on it?

The WITNESS. I never talked to her personally.

Mr. SADKIN. Either in favor or opposed?

The WITNESS. No.

EXAMINATION BY MS. COMSTOCK:

Question. When you spoke of the team approach and team meetings you had about this, could you tell us who was involved in those meetings?

Answer. All the people that I have just named, on and off, would have been involved in the meetings, different groups at different times, depending on people's schedules, and, you know, I might see George in the cafeteria and talk to him for 10 minutes about an issue in passing. It wasn't a formal set of meetings. We all see each other all the time and I am sure we had formal meetings and we also have in the hall conversations about issues all the time, too. So it would have been all those people, not necessarily in every single meeting.

Question. Was it your understanding Michael Anderson was involved in a lot of meetings?

Answer. He was involved in the meetings. He was more involved in the later meetings, and I think in the earlier meetings, George—my recollection, which could be faulty, but my recollection is that George's staff handled the issue in the beginning, and towards the end, Mike got more involved when we were getting closer to finalizing the—how we were going to roll out the ladder. He certainly attended meetings with Duffy and discussed it with Duffy, however.

Ms. COMSTOCK. Was there a comment you wanted to add, Mr. Elliott?

The WITNESS. Actually, Tim reminded me. It is a good point, though, which is that part of the reason I don't know what Ada's position is is because she had

recused herself. I mean, we were not—there was no reason towards the end to talk to her about it because she had recused herself.

EXAMINATION BY MS. COMSTOCK:

Question. You talked about this evolving process, and Ada Deer had not recused herself until fairly late in the process, is that correct?

Answer. I don't know the date when she recused herself.

Question. Actually, I don't believe the department has a formal recusal letter, but my understanding is she recused herself sometime in June of '95, and, you know, these first meetings were in February. Do you know if you had discussions with her between February and June, if she was involved in any of these meetings?

Answer. I would not have had discussions with her. It would have been her staff that would have discussed it with her. And most of the meetings were staff level meetings. They are not meetings that would have been on the Assistant Secretary's schedule.

Question. Okay. Following the February 8, 1995 meeting, I guess you are aware Mr. Duffy was at that meeting, with the minutes in the Minnesota delegation?

Answer. Yes.

Question. Did you have any discussions with Mr. Duffy about that meeting?

Answer. What I remember about that meeting is, and it's just a vague recollection, but that he—it's a vague recollection. If I remember correctly, he felt that he had walked into the meeting unprepared for how large it was, how many people were there, and the fact that members were going to be there, that it was a bigger, more formal meeting than he had been prepared for and he was new to the issue.

Question. Did he mention anything about the comment period being reopened on the casino matter?

Answer. I don't recall.

Question. Did there come a time when you recall him discussing with you the concept of reopening the comment period on the casino application?

Answer. Yes, but it was more in the context of closing comments, because we continued to receive—there isn't a formal comment period, which is something in my Senate deposition I was incorrect about, because I was not that familiar with the regs. There isn't a formal comment period and his concern was that if we did not put an end date to the comments coming in, it would be a way of the opponent tribes delaying a decision indefinitely. And in fact, I think it is worth noting that in terms of the comment period, we continued to receive quite a few letters from members of Congress well beyond the April 20th deadline. So certainly Congressional members viewed the comment period as continuing to be open because they wanted their views in.

Mr. SADKIN. Was it April 20th, you said?

The WITNESS. Uh-huh.

Mr. SADKIN. Are you sure about the date?

Mr. ELLIOTT. Think about it, if it was April 20th or some other date.

The WITNESS. Maybe I misunderstood. Is what April 20th?

Mr. ELLIOTT. The deadline for comments.

The WITNESS. Well, where is Duffy's letter. I thought that is what it was. Maybe I am wrong.

EXAMINATION BY MS. COMSTOCK:

Question. Actually, I was looking for a clean copy. I have a copy of another document, I think the record will show it was April 30th?

Answer. Oh, I don't remember. It may be.

Question. Per Mr. Duffy's letter?

Answer. It is whatever is in Mr. Duffy's letter.

Question. If you have it?

Answer. I have it. I mean, whatever the letter says is the correct date.

Question. Okay. It is Duffy's letter of March 27th and it is April 30. You are right, thank you.

Okay. And then, this is actually a different—

Answer. That is the letter.

Question. This is a March 27, 1995 letter. I will go ahead and make that Deposition Exhibit No. 1. And this is the letter, so we can get it straight for the record, you are referring to about reopening the comment period.

[Sibbison Deposition Exhibit No. 1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

The WITNESS. In my view, the comment period was not reopened. It is always open, and Duffy was actually telling—was trying to close it. In other words, we receive comments on applications when they come into central office and they are put into the file, so we continued to receive a significant amount of correspondence from Congressional members and I assume that they also assumed that their comments would be incorporated into the file. I think Duffy was trying to basically say, look, at some point we have to stop receiving comments and, you know, we are going to have to make a decision. So, you know, I am not an expert on the regulations, but it is my understanding that there is not a set comment period on the regulations.

EXAMINATION BY MS. COMSTOCK:

Question. Okay. And directing your attention to the second paragraph of the letter, in discussing the meeting, the second sentence says they, meaning the members who were at the meeting, specifically requested they be granted additional time to submit reports detailing the impact of the proposed acquisition on nearby tribes.

Mr. ELLIOTT. Ms. Comstock, to interrupt for a minute, I think it might be more appropriate to say "they" means tribal representatives.

Ms. COMSTOCK. I was just about to say that.

EXAMINATION BY MS. COMSTOCK:

Question. Because they in fact were the people who submitted the additional reports. Then Mr. Duffy goes on, quote: We agreed to this request, but did not set a deadline for the submission of this information. And then the letter continues: In order not to unduly delay consideration of this proposed acquisition, we have advised the parties with whom we met on February 8 that any additional information must be submitted by April 30, 1995.

Do you know when the parties who attended the February 8 meeting were advised that they had to submit everything by April 30th?

Answer. No.

Question. Do you know if it was prior to this March 27 letter here that is addressed to Mr. Ackley?

Answer. I don't know.

Question. Okay. Now who is Mr. Ackley?

Answer. He is the chairman of the Sokaogan Chippewa.

Question. Okay. That was one of the tribes that was proposing the Hudson casino application?

Answer. The Sokaogan Chippewa are one of the three applicant tribes.

Question. So they were for this application going forward?

Answer. Correct.

Question. Do you know when the decision was made to allow for this ongoing reopening of the record, and ongoing consideration?

Answer. My understanding, and I was not at the meeting so I could be incorrect, is that the Congressmen at the congressional meeting, they requested that the department allow the parties to provide additional information, and that at that meeting Duffy agreed to do that. I was not there but that is my understanding.

Question. That seems to be what the letter suggests, Duffy says we agreed to this request. It seems to suggest that the request was made at the February 8 meeting and the agreement happened at the February 8 meeting, would that be correct, or that is your understanding?

Answer. That is what I gather from reading the letter, too. I don't have any independent knowledge of it.

Question. Okay. Can you tell us anything that you recall, anything else you recall about this extension time period, any discussions you had with Duffy about it or anybody else?

Answer. Just that there was a concern that it was unfair to the applicant tribes not to put a deadline on the submission of additional information, because it would allow the opponent tribes to delay the process indefinitely.

Question. Okay. And in the last sentence of the letter it does indicate that this application is being considered by the Department of Interior under the section 20 determination, is that correct, the end of the second paragraph?

Answer. I'm sorry, I am not sure I understand.

Question. Was it your understanding that this decision was being made under section 20 of the Indian Gaming Act, as indicated in this second paragraph?

Answer. No, the decision in general about whether or not to take land into trust, it would have to be under both section 5 of the IRA and section 20 sections. The Indian Gaming Regulatory Act does not provide the Secretary with the authority to take land into trust. That authority is given under the Indian Reorganization Act.

Section 20 of the Indian Gaming Regulatory Act is simply a second group of standards by which we then determine whether gaming can be conducted on a parcel taken under the Indian Reorganization Act, but the Gaming Act itself and section 20 itself do not give the Secretary the authority to take land into trust. So perhaps this is unartfully worded, but I mean as a legal matter, the decision about whether to take land into trust cannot be on section 20 alone because it doesn't give the Secretary the authority to take land into trust.

Mr. SADKIN. Isn't the tribal consultation requirement under section 20?

The WITNESS. It's under section 20 and section 151 and the IRA, both.

EXAMINATION BY MS. COMSTOCK:

Question. Do you know who drafted this letter?

Answer. No.

Question. Did you assist Mr. Duffy in drafting it at all?

Answer. I assisted Duffy in drafting many letters. I don't believe I drafted this letter. It does not look like my writing style. My guess is it was drafted by the gaming office because of what is down here.

Question. You are pointing to the information on the bottom of the page, which has various people's phone numbers and—

Answer. Right, and if I had drafted this, none of this would be on here.

Question. Can you decipher any of that for us to explain, on the bottom of the page, what that means?

Answer. Sure. Bcc: Secy Surname, Secy, blah, blah, blah. I think that means that it goes to—that I—actually, I don't know what that means. I assume BIA has an executive secretary and they have master files somewhere or something and that is what this is. You would have to ask someone from BIA. The next line, BIA:GSKibine:trw. Actually, TRW is Troy Woodward so that probably means the Solicitor's Office also had a hand in writing this. No, it could be Tona Wilkins, I take it back. TRW is probably Tona Wilkins, who is George's secretary.

Question. The way it is there is GSKibine:trw, which is usually the secretary?

Answer. That is right. That is probably Tona, his secretary. Then I assume the next thing is corrections per J. Duffy. That means John must have edited it somewhat.

wp:a:ackley.dog. That is probably the file name on their system, and an identical letter sent too I think is self-explanatory. It looks to me this was generated out of the Indian Gaming Management Staff.

Question. And the handwriting that is on this particular copy of the letter, at the top of the page, could you tell us—

Answer. This right here?

Question. There is Scott Keep's signature there?

Answer. This here.

Question. And then there is another one that says file, Hudson Dog Track?

Answer. That is my handwriting.

Question. And the note, Heather, as per my e-mail, then from Scott Keep, do you know what that is about?

Answer. I don't. But when Scott started sending me documents, it was when the litigation started, because he is the point person on the litigation, so all the notes I have from Scott on dog track documents have to do with him sending me stuff from—and I would have had this in my files anyway. I have no idea why he sent it to me.

Question. Did he regularly send you documents on the litigation?

Answer. Yes. I can't say as though I ever read any of them, but, yes, he did.

Question. Had you kept independent copies of this in your file?

Answer. Yes.

Question. Okay. And then turning to the second page of this, it is an April 21, 1995 letter to you.

Mr. ELLIOTT. Have you labeled this yet?

Ms. COMSTOCK. Did you want to label that copy?

Mr. ELLIOTT. I don't care which one you label.

Ms. COMSTOCK. We can go ahead and label the one you will be reviewing.

EXAMINATION BY MS. COMSTOCK:

Question. This is a letter from Thomas Corcoran, and with an attachment on marketing economic impact analysis. Do you recall receiving this?

Answer. I recall receiving this.

Question. And can you tell us about that?

Answer. I recall receiving it and not reading it and sending it down to George.

Question. Okay. In the letter it says good to talk with you yesterday afternoon. Do you recall having a conversation?

Answer. No, I don't. I don't remember a conversation with him at all. My guess is he called to make a pitch and I was—and he wanted to send this information and when we got information, I would send it to the gaming office because they were the people who were reviewing all the factual information. So I don't remember the conversation at all, which leads me to believe it was not a substantive conversation but I don't remember it.

Mr. SADKIN. When you said you sent it to George, is that George Skibine?

The WITNESS. Yes. Thank you.

EXAMINATION BY MS. COMSTOCK:

Question. I believe in your Senate testimony, we don't need to go back into that, you only recalled one meeting with Mr. O'Connor, is that correct? Actually, just for the record to reflect, this letter from Mr. Corcoran is on the letterhead of O'Connor & Hannan, which was the lobbying firm lobbying against the Hudson casino application, and Mr. Corcoran was also a member of that firm, is that your understanding?

Answer. Yes.

Question. And do you recall meeting with Mr. O'Connor?

Answer. No, not really. What I recall is going to a meeting with Collier because Duffy was out of town. I knew very little about the issue at that point, and that O'Connor may have been one of the people in the meeting. I said the same thing in the Senate, that I don't remember meeting O'Connor specifically unless he was in that meeting with Collier, which he may have been, but I can't remember who he is.

Question. Okay. And actually now that we are in this area, on this page with page 52 on it, and some of the others, one of the things that you had said in the—actually, it is on page 51. You indicated that Mr. Duffy wanted to make a public statement with this policy. Did that ever get put down in writing anywhere in terms of this policy, this evolving policy, other than the July 14, 1995 rejection letter? Is there any other expression of this policy anywhere throughout the time when it was evolving?

Answer. There is, informally, in the sense that I believe there is some e-mail, there is e-mail traffic, not much, but some, from the—there is certainly not a formal document, and there would not have been. I mean, we would not have created a formal document to elucidate this policy. But I do believe that there is e-mail from me when I am talking to other people who worked on this issue that talks about Duffy's desire to set this policy. And I believe there is e-mail from George to the same effect. I mean, it's casual e-mail between all of us, it is not formal documents.

Mr. SADKIN. Do those e-mails articulate a policy or just that Duffy wanted to form a policy?

The WITNESS. Well, they articulate that Duffy wanted to use the decision document itself to articulate the policy, so it—I think the e-mail gave a sense that that is the policy that we are developing and that we believe is correct, and that the formal articulation of it will be—the culmination of that is in the July 14 Mike Anderson memo.

EXAMINATION BY MS. COMSTOCK:

Question. Do you know if the opposing tribes were informed of that at any time, if those concerns were expressed to them?

Answer. The tribes opposed to the—

Question. I'm sorry, the applicant tribes, yes, I'm sorry. I will ask about the opponents also, but why don't I first ask about the applicants?

Answer. It is my belief that it was. I don't have any independent—I don't have a document.

Question. Do you know who would have told the applicants this is Mr. Duffy's policy?

Answer. I believe, but cannot speak for him, that George Skibine met with at least one or 2 of the chairman, and told them that the local opposition was a problem. I believe that when Duffy met with former Congressman Moody that he probably told him it was a problem. It certainly was in the record itself that the tribes had access to—the tribes wrote us a letter, I can't remember if I brought it, wrote us a letter at one point taking issue with some of the other deficiencies in their application but not taking issue with the local opposition. So they obviously had reviewed the record and should have been aware of it, because they did address other

issues in a letter that they wrote to us afterwards. But I personally did not speak with anyone from the tribes and cannot tell you that for that reason.

Question. Other than Mr. Skibine, are you aware of anybody expressing any of these concerns to them?

Answer. I don't know. It's possible that someone in the Solicitor's Office—

Mr. ELLIOTT. I think she already testified in the answer to the previous question that she believed maybe Mr. Duffy had talked to Mr. Moody, but she can respond to who Mr. Moody might have been. In answer to your question, other than Mr. Skibine, yes, there was.

EXAMINATION BY MS. COMSTOCK:

Question. Is there anybody else that you recall?

Answer. I don't know. It's possible someone in the Solicitor's Office could have conveyed that information to the attorneys as well. I don't have any independent knowledge of it, though.

Question. All right. The Secretary, Secretary Babbitt has stated both in his Senate testimony and out of recent comments the sentiment that the department didn't want to force off-reservation casinos upon unwilling communities. Is it department policy that any opposition to an off-reservation casino is sufficient to cause an application to be rejected?

Mr. ELLIOTT. What are you quoting from?

Ms. COMSTOCK. The general comments he has made about that. That has been a pretty standard comment that the Secretary has made.

Mr. SADKIN. I am going to object for a second. Ms. Comstock, if you are going to be using specific references to a specific comment, will they be introduced into the record?

Ms. COMSTOCK. I mean, the Secretary has generally stated this.

EXAMINATION BY MS. COMSTOCK:

Question. Why don't I ask it this way. To your knowledge, has the Secretary generally stated the overriding concern here is not wanting to force off-reservation casinos upon unwilling communities?

Answer. I'm sorry, is the question did the Secretary say that?

Question. Did he say something to that effect, that that was the overriding concern?

Mr. ELLIOTT. What time frame?

Ms. COMSTOCK. In his testimony, in your discussions. I mean, you can tell me when he expressed those concerns if it is prior to the past few months?

The WITNESS. I am unaware of the Secretary having any significant involvement in this issue during the time period in which we were reviewing it. I am unaware he had any involvement in it whatsoever. If you are talking about his testimony, I believe he—I don't remember what he said, but that certainly is the department's view and it would make sense to me that he said that but I don't remember exactly what he said in his testimony.

EXAMINATION BY MS. COMSTOCK:

Question. Just generally, I wanted to ask is it department policy that any opposition to an off-reservation casino is sufficient to cause an application to be rejected?

Answer. I'm sorry, say that again.

Question. Is it department policy that any opposition to an off-reservation casino is sufficient to cause an application to be rejected?

Answer. I am trying to answer this as simply as I can. We have never been presented with a case in which the local towns just made a blanket assertion that they don't want Indian gaming and therefore we have rejected it. In this case, there was other evidence that there was going to be detriment to the local community, and so I am having a hard time answering this question because it is a—in a sense, it is a hypothetical. We have never been faced with that exact situation.

Question. And is the other evidence of detriment the opposing Minnesota tribes?

Answer. No, the detriment to the surrounding community would be the deficiencies in their NEPA analysis, the detrimental effects on the scenic, I have forgotten the name of it, whatever, the scenic riverway. I can't remember the name of it. I believe they also were concerned about traffic congestion and that sort of thing.

Question. How much opposition is enough to derail an application? Is there a standard?

Answer. No, I don't think there is and I don't think that there can be. I mean, the facts are different in every case, and it has to be reviewed on a case-by-case basis.

Question. Are you aware of any type of articulation of this policy? I think you said you don't know of any written records, but do you know of any type of meetings or seminars, like for the local offices, where this kind of thing may have been expressed to them.

Mr. ELLIOTT. What kind of thing are you speaking about? Are you speaking about your premise that the Secretary has a policy that is pervading the department or are you speaking about her premise that these things have to be decided on a case-by-case basis?

Ms. COMSTOCK. I think the witness testified about this evolving policy of Mr. Duffy's and then the comments we are referring to also is not wanting to force off-reservation casinos upon unwilling communities. What I am trying to understand is how this was articulated perhaps to the local bureau so they would know that this was an evolving policy and standard that was going to be applied when things got to Washington?

Answer. It is my understanding this policy had been applied in the Lujan administration, in the Bush administration, that applications had been denied because of local opposition before this administration took office.

Question. You are talking about the evolving policy?

Answer. It was an evolving policy in the sense that we were trying to figure out the best way to articulate it under this administration, but it was not a departure from what had been done in previous administrations.

Mr. SADKIN. Did it make a difference that this was an off-reservation site?

The WITNESS. Yes. It makes a big difference that it is an off-reservation site and that it is so far from the home reservations of the three applicant tribes. The Gaming Act itself makes a distinction for applications that are contiguous to or on reservation. Land bases that are either contiguous or on reservation are exempted from the section 20 process altogether, and even in a situation where a tribe would apply to take land into trust, perhaps not contiguous to his reservation but in the same town, we would view the tribe as already being part of the local community and the tribe would be—you know, whether it is detrimental to the local community and in the best interest of the tribe, we would look at it differently because the tribe is part of the local community. In this case, the tribes are not part of the local community and were essentially being imported in by this gaming contractor and it was certainly our sense that is what the contractor was trying to do. They had already tried to strike a deal with a different tribe and the deal fell through, and then, in my personal view, they went tribe shopping and found these three tribes, and these three tribes are not part of the local community.

Question. Were you aware of any efforts made to provide the applicants the opportunity to cure their application or to address any of the perceived defects?

Answer. I personally made that offer after the July 14th letter.

Question. And who did you make that offer to?

Answer. Attorneys for one of the three applicant tribes, and I can't remember which one.

Question. Can you describe that contact?

The WITNESS. Can I talk to you for a second?

[Witness and counsel conferring.]

Mr. ELLIOTT. Ms. Comstock, I'm sorry, but those communications were in the context of the ongoing litigation. So since we are not delving into that litigation, she is not going to answer that question.

Ms. COMSTOCK. These were contacts made—

Mr. ELLIOTT. In the context of litigation already filed by the disappointed tribes to overturn the Secretary—or the department's decision.

Ms. COMSTOCK. And I know Mr. Wilson has addressed this before, but to the extent that these contacts with the tribes and all are going into the subject matter, it is not my understanding there was any agreement not to address the litigation.

Mr. ELLIOTT. Well, maybe you didn't hear me at the beginning of this deposition when I said I had had representations from Majority counsel that it was not the purpose—

Ms. COMSTOCK. Do you have anything in writing on that?

Mr. ELLIOTT. Do I have anything in writing on that? If you go back and look at depositions of Ada Deer, I believe, Tom Hartman, Michael Chapman, Robert Jaeger, and perhaps George Skibine and perhaps Michael Anderson, you will find representations to that effect by both Mr. Wilson and Mr. Dold.

Ms. COMSTOCK. And is it the Secretary's position he is going to be providing us a letter with some type of privilege asserted over this?

Mr. ELLIOTT. We have provided you information. In every letter we have said we are submitting documents and records which are privileged. We have requested in that that those documents be maintained in confidentiality, that they not be re-

leased to the public, that if you get a request from the public for release of them that we be consulted and that they not be released without our reviewing them. When we submitted the administrative record, we submitted one separate volume, all of the documents which were marked and labeled as privileged and essentially the same statement was made, that we did not want them released because of their privilege.

Mr. SADKIN. Minority would like to concur in that objection. We feel the department has been more than cooperative in helping this committee investigate allegations of improper conduct and anything related to the litigation, and our view should not be addressed during these depositions.

EXAMINATION BY MS. COMSTOCK:

Question. Are you aware of the Justice Department expressing concerns to the Interior Department about the weakness of the application process and how it was handled?

Mr. ELLIOTT. I object to that also, Ms. Comstock. If you have a document that has that, and I have seen it before, I believe you do have such a document, that document was provided by the Assistant U.S. Attorney to a leading attorney on the litigation. It was his analysis of certain aspects of the litigation in the context of a possible settlement. That document is marked privileged and relates solely to the litigation.

Ms. COMSTOCK. Okay. That is Deposition Exhibit No. 2. Are you representing that you will not answer any questions regarding this document?

Mr. ELLIOTT. I am claiming that Ms. Sibbison will not answer any questions about this document, since it is a privileged communication, in the context of litigation.

Ms. COMSTOCK. And for the record, that is a February 14, 1996 memorandum for Scott Keep, Office of the Solicitor, from David E. Jones, Assistant U.S. Attorney, in the U.S. Attorney's Office in the Western District of Wisconsin, and the subject matter is analysis of litigation risks in *Sokaogan vs. Babbitt*, et al.

Mr. SADKIN. I would like to object to that being placed in the record. The department is holding open the possibility of asserting privilege over this document, and since these depositions may be made public on the vote of a committee, I don't think it would be appropriate to have a potentially privileged document made public. Therefore, I respectfully ask on behalf of the Minority that this document not be made a part of the record.

Ms. COMSTOCK. We have received no letters from the Secretary as to withholding privileged documents.

Mr. SADKIN. Let the record reflect this is a document labeled as privileged.

Ms. COMSTOCK. We have received no letters from the Secretary asserting a privilege over documents.

Mr. ELLIOTT. I believe you have, Ms. Comstock.

Ms. COMSTOCK. From the Secretary?

Mr. ELLIOTT. Not from the Secretary, and it is not required that the Secretary assert the privilege. The attorneys may assert the privilege for him and members of his staff may assert the privilege, since they are the clients.

Ms. COMSTOCK. Is it the Secretary's position that he is going to assert privilege over these documents?

Mr. ELLIOTT. We have asserted privilege over these documents. They have not been released so far as we know to the plaintiffs in the case and they will not be released because they are privileged documents. We understand from the Court cases that we have researched that indeed privileged documents may be released to the Congress, but that does not waive the privilege. On the other hand, that it is possible for the Congress to waive the privilege on behalf of the United States, which we think would be very unfortunate in this case. To the extent you believe that a privilege has not been asserted, privilege is being asserted right now for this document and for any other documents of which we will claim a privilege. The Congress should not be in the business of waiving or attempting to waive inadvertently or otherwise privileges claimed on behalf of the United States of America, of which the Congress is a part.

Ms. COMSTOCK. I think, as you say, it is a third party privilege, which I think Congress has always recognized exists, regardless of what the committee makes public. There is still, as we have agreed with the White House, despite making documents public, third party exists independently and we aren't making any representations to that one way or the other.

Mr. ELLIOTT. You are not making representations to that, is that what you are saying?

Ms. COMSTOCK. One way or the other.

Mr. ELLIOTT. Well, then I would continue to assert the privilege. If you agree that the privilege can't be waived by the Congress, then if it is released, we assume that the committee and the committee staff will be willing to file affidavits and requisite pleadings in court to assist us in arguing that privilege has not been waived so the plaintiffs may not use our own documents against us when they are privileged documents.

Ms. COMSTOCK. Is it your position you are not going to answer any questions on these documents today?

Mr. ELLIOTT. On that document.

Ms. COMSTOCK. Yes, okay, so we can just move on.

Mr. ELLIOTT. Yes, ma'am.

Mr. SADKIN. I'm sorry, Ms. Comstock, have we come to an agreement that this will not be placed in the record?

Ms. COMSTOCK. No, we are going to put that in the record. I believe it was previously placed in the record.

Mr. SADKIN. I object, I don't believe that my objection was recognized at the time that you put it in the record, I believe I have an opportunity to object, therefore I believe this would be an appropriate opportunity for us to agree that this document should not be placed in the record, since the objection was heard immediately upon placement by you.

Ms. COMSTOCK. We are going to go ahead and put it in the record.

Mr. SADKIN. Well, the Minority objects.

Mr. ELLIOTT. And I would note a continuing objection on the part of the Department of Interior and the witnesses.

Ms. COMSTOCK. Do you want to take a 5-minute break?

Mr. ELLIOTT. Sure.

[Recess.]

Ms. COMSTOCK. We can go back on the record.

I just want to get clear for the record, has the Secretary directed you, then, Mr. Elliott, to make this assertion of privilege over this document?

Mr. ELLIOTT. No, ma'am.

Ms. COMSTOCK. All right. And what is the basis, then, for your not allowing the witness to speak about this document?

Mr. ELLIOTT. The basis is that I, as a representative of the client, am asserting privilege over this. This is a communication from the attorneys to us, the client agency in this case, and a privilege may be asserted by me. If you would like me to—if you would like to terminate the deposition right now, we can go back and get a letter from the solicitor of the Department of the Interior asserting privilege.

Ms. COMSTOCK. What privilege?

Mr. ELLIOTT. Attorney-client privilege.

Mr. SADKIN. Ms. Comstock, the Minority has objected to placing this document in the record given that this document objection pertains to the scope of this investigation, that is an objection that is to be decided by the full committee. Therefore, pending a decision by the full committee, we would like this document not to be placed in the record.

Ms. COMSTOCK. Okay. Well, we are going to place it into the record today, and I will move on.

[Sibbison Deposition Exhibit No. 2 was marked for identification.]

Mr. SADKIN. I want to note for the record that the Minority believes that that would be a violation of committee rules. It is the jurisdiction of the full committee to vote on objections to scope, and Ms. Comstock, as Majority counsel, I assume you are not respecting that objection.

Ms. COMSTOCK. That objection is preserved for the record to be addressed by the full committee as our rules, as we started out, indicate. So you all still can raise that in full committee.

Mr. SADKIN. For the record, that is House Rule XI 2(k)(8).

Ms. COMSTOCK. Okay. What is your scope issue?

Mr. SADKIN. That what you're trying to do here is broaden the scope of this investigation into the litigation process, involving the Parliamentarian and private litigants. We don't believe that it is within the scope of this investigation to look into this private litigation. We don't believe it is the committee's role to take a position on the litigation. Therefore, we would like this deposition limited to the investigations of allegations—we are supposed to be investigating political influence on the Department's decision-making, and looking into litigation does not look into those areas. It is an abuse of the scope, and we object to any questions about the litigation, and we specifically object to this document being placed in the record.

Ms. COMSTOCK. Okay. The issue here is we are concerned about the decision-making. This document, Exhibit 2 here, does address the decision-making process and

some deficiencies in it. I don't believe this is out of the scope, but I would like to see if we can ask some more—I understand your refusal to allow the witness to answer certain questions here, so I would like to return to some general topics.

Mr. ELLIOTT. Let me make one other statement about the document and the privilege, Ms. Comstock. It is my recollection that the court cases on this subject indicate that the agency could be held to have waived the privilege if it was in a reasonable expectation of the agency that released a privileged document to the Congress in the exercise of its legitimate legislative and oversight authority. Its reasonable expectation may have been that the document, the privileged communication, might have been released to the public. It is my concern that this not happen in this case. I would like assurances from you and from Mr. Wilson, who introduced the other document, that this document will not be released to the public and, therefore, jeopardize waiving the privilege that attaches to the United States of America in this case.

Ms. COMSTOCK. Neither Mr. Wilson nor myself are going to represent today what the full committee is going to do, and as we have already said, the objection of the Minority is still preserved for the full committee, and I think we can move on.

Mr. SADKIN. Counsel, we would like a ruling from the Chair on this document before it's placed in this deposition record.

Ms. COMSTOCK. Well, your objection is preserved for the record, and that's the way the rules work on this.

So I would like to move on to another area of questioning.

Mr. ELLIOTT. I would also appreciate it if counsel will communicate the agency's interest and insistence on preservation of the privilege that attaches to the United States and to this document so that the Chair does not release the document.

EXAMINATION BY MS. COMSTOCK:

Question. Ms. Sibbison, can you tell me if you had any discussions with Mr. Duffy about any concerns at any time that you had about deficiencies in how this decision was made?

Answer. I did not have any—I did not have any discussion with Mr. Duffy about deficiencies, because I didn't believe that there were any in how the decision was made.

Question. Did you discuss with anybody else at the Department any concerns—
Answer. No.

Question [continuing]. That they had, that they may have had about deficiencies in the record and how the decision was made?

Answer. Let me make sure I understand your question. Aren't those two different questions, deficiencies in the record and deficiencies in how the decision was made?

Question. How about I take them separately?

Answer. Okay. Nobody expressed any concern to me that there were deficiencies in how the decision was made.

Question. Nobody in the Department?

Answer. Right.

In terms of the decision, again, I don't know if you mean what the final outcome was to deny the request, or if you mean the legal and policy rationale that was expressed in the decisional document that was sent out on June 14th—July 14th.

Question. The July 14th letter, have you had any discussions about deficiencies in that letter? When I say that, problems that you have identified within that letter that was—the rejection letter that was sent to the applicants?

Answer. I participated in numerous conversations about how best to construct the letter. Nobody talked about it in terms of deficiencies.

Question. Either before or after?

Answer. No.

Question. Could you just tell us who the drafting process of the July 14th letter, who participated in that?

Answer. My recollection is that George wrote—Skibine wrote the first draft. After that it was, I think, distributed among the people who work on it, and we all made suggested changes. I don't know in what order that happened; I don't remember. The solicitor's office worked on it, our office worked on it, the gaming office work on it, and Mike Anderson worked on it, but I don't remember in what order.

Question. Okay.

Ms. COMSTOCK. For the record, why don't we make the July 14th letter Deposition Exhibit No. 3. Do you all have a copy of that?

[Sibbison Deposition Exhibit No. 3 was marked for identification.]

Mr. SADKIN. Do you have copies for the Minority?

Ms. COMSTOCK. Yes.

Mr. SADKIN. Thank you.

Ms. COMSTOCK. I just wanted to have this for the record. I know you have discussed this previously, so I am not going into a lot of detail on this; I just wanted to have this as an exhibit for the record, because it's the letter you're referring to. Would it be the July—we have a July 29th draft.

I will make that Deposition Exhibit No. 4.

[Sibbison Deposition Exhibit No. 4 was marked for identification.]

EXAMINATION BY MS. COMSTOCK:

Question. Is that the draft that is your understanding that is Mr. Skibine's draft that you were referring to previously?

Answer. I would assume it's George's draft, it's not mine, and I can't think of who else would—I mean I don't know.

Question. Could you tell us your involvement in the drafting process?

Answer. When it would—when the gaming office would send it up, I would edit it as I saw fit, and then I would have shared my suggested edits with Duffy, and then we would have sent it back down, or if Duffy wasn't there, I would have sent it down just with my edits on it. I don't remember which happened.

Question. Do you have any further understanding of what Mr. Duffy's role was in the editing process?

Answer. He definitely edited at some point, too.

Question. And do you know—you had stated in your Senate deposition that Mr. Duffy was kind of a key policymaker and sort of a key person driving, you know, how that policy was going to be made.

Do you know if you had discussions then about how this letter should be crafted?

Answer. If he had discussions with——

Question. With Mr. Skibine?

Answer. I believe that he did.

Question. And what was your understanding of what his direction was to Mr. Skibine?

Answer. Um, I believe that in the group context we discussed the interaction between the Indian Reorganization Act and the regulations implementing the IRA at the 25 CFR 151 and our actions with the section 20 analysis, and discussed how best to roll out the decision.

Mr. SADKIN. Ms. Sibbison, did you ever testify that Mr. Duffy was the "key" decision maker?

The WITNESS. I don't remember. I doubt I would have put it quite that way.

Mr. SADKIN. Okay. So——

The WITNESS. I mean, I——

Mr. SADKIN. So those are Ms. Comstock's words and not your own?

The WITNESS. To the best of my memory, that's correct.

Mr. SADKIN. Okay.

EXAMINATION BY MS. COMSTOCK:

Question. Okay. On page 118 of your Senate deposition, the question was asked: "Who was the person most centrally involved in it?", the policymaking process being the "it" referred to. And the answer, your answer was "Duffy. He was not the decisionmaker, he did not have a line authority to make the decision, and people who do have line authority can reject his recommendations, but you know, he was the one who "was——"

"And as a practical matter," next question. "As a practical matter, would you say that Duffy was the one who, quote, made the decision?"

And then there is continued discussion here. We can go ahead and enter that in the record; I don't need to read all of these pages on here. But at the bottom of the page here, that we can put in the record, the question was asked, "My question was, that if Mr. Anderson disagreed with this, is there any doubt in your mind that Mr. Duffy's view of it would have prevailed."

Answer: "If I had to bet, I would bet on Duffy, but it wasn't 100 percent."

I will go ahead and put your words here in the record and make that deposition Exhibit No. 5.

[Sibbison Deposition Exhibit No. 5 was marked for identification.]

Ms. COMSTOCK. For the record, it's pages 115 through 120 of your Senate deposition of September 26, 1997. I won't put the entire deposition in the record.

EXAMINATION BY MS. COMSTOCK:

Question. Would that still be your testimony, then, that the person most centrally involved in this decision-making process was Duffy, John Duffy, counselor to the Secretary?

Answer. Um, he was most central involved in the sense that as the decision was being formulated, people were talking to John about it, but I think saying he has the key person or he has the most centrally—I can't remember what your words were—person can be misconstrued to think that he was the only person making this decision, he was the only person who had significant input into it. So he was central in the sense that we used to have meetings in his office and we—but there were a lot of people involved in this decision-making process, and—

Question. And Mr. Duffy is a senior counselor to the Secretary?

Answer. His title is Counselor to the Secretary.

Question. He has one of the Secretary's most senior aides.

Mr. ELLIOTT. He's not there any more.

Ms. COMSTOCK. I understand that.

EXAMINATION BY MS. COMSTOCK:

Question. When was it that he left?

Answer. I can't remember when he left, I'm embarrassed to say. I can't remember when he left. It was after that, obviously.

Mr. SADKIN. Wasn't the fact-finding, though, and the analysis of the facts left to the career Indian Gaming Management Staff and Mr. Skibine?

The WITNESS. Absolutely.

EXAMINATION BY MS. COMSTOCK:

Question. I wanted to turn to Secretary Babbitt's letters that he wrote to Senator McCain on the subject. This is a July 19th letter and a July 25th letter from Senator McCain.

Answer. Uh-huh.

Ms. COMSTOCK. And I will make those Deposition Exhibit Nos. 6 and 7.

[Sibbison Deposition Exhibits Nos. 6 and 7 were marked for identification.]

EXAMINATION BY MS. COMSTOCK:

Question. Have you seen these documents before?

Answer. Yes, I have.

Question. And do you recall seeing these letters from Senator McCain?

Answer. I'm sorry, do I recall—

Question. Do you recall the Secretary's office receiving these letters?

Answer. Yes, I do.

Question. And could you tell us any discussions you had about these letters and who you had them with?

Answer. Um, I believe that John was gone by then.

Question. You mean John Collier left—

Answer. Well, Tom Collier was definitely gone, and I believe Duffy was gone, although I don't remember for sure, but I believe Duffy was gone by then.

Question. Okay.

Answer. I believe I spoke to John Leshy, the solicitor, and beyond that, I just, I don't remember, to be honest.

Question. Okay. And why don't I just, as we go through these—let me also give you the Secretary's response of August 30th, 1996.

Ms. COMSTOCK. I will make that Deposition Exhibit No. 8.

[Sibbison Deposition Exhibit No. 8 was marked for identification.]

Ms. COMSTOCK. The August 30th, 1996, letter to Senator McCain from Secretary Babbitt and the two enclosures are a memo to the Secretary from Heather Sibbison, our witness here today, and also a memo to the Secretary from the solicitor, and it appears that John Leshy's signature is there. His memo is dated—John Leshy's memo is dated August 29th, 1996, as is your memo, also dated August 29th, 1996. Just so we can have all three of those here, just to give you a complete opportunity to review both the letters and the responses.

EXAMINATION BY MS. COMSTOCK:

Question. Does this assist your recollection in terms of your role in responding to Senator McCain's letter?

Answer. Yes, in that I drafted the—well, I obviously had a signature role in drafting my memorandum, which I believe I did at the request of the solicitor, but beyond that—I mean I'm not sure what you're asking me. I'm sorry.

Question. Okay. So Mr. Leshy had requested that you write the August 29th memo that's part of this—

Answer. That's my recollection.

Question [continuing]. Exhibit.

Did you have any discussions with him about responding to Senator McCain's letter?

Answer. I don't remember any specific discussions.

Question. And do you remember any topics that were at issue here that you—that he had questions about, that was there any back and forth or discussion about?

Answer. My vague recollection is that I was asked to just write a chronology and explanation of or a decisionmaking in the context of the McCain letter, and that's what I did—and that that's what I did here.

Question. Okay. And this is an August 29th, 1996, memo, approximately a year to a year-and-a-half after a number of the events had occurred.

Answer. Right.

Question. Did you utilize any records or anything to refresh your recollection in writing this memo?

Answer. Yes, I'm sure I did.

Question. Do you know what records those would have been?

Answer. The decision letter itself. I don't remember what else.

Question. Okay. Turning to the second page of your memo, and I'm sorry these don't have Bates Stamp numbers on the bottom, so we are still referring to Deposition Exhibit No. 8, and just to make clear for the record, there are three different documents in Deposition Exhibit No. 8, but they did come together. It's Secretary Babbitt's letter to Senator McCain of August 30, 1996, responding to Senator McCain's July 19th and July 25th letters, and then there's an August 29th memo of Ms. Sibbison's and an August 29 memo from Mr. Leshy of the solicitor's office.

On the second page of your memo, you are addressing the "events described in the Senator's letter," and the first paragraph there references that the first three bulleted events, and I'm presuming that would mean, if you look at the July 19th, 1996, there are bulleted items in that letter, so it appears that you are referring to that letter. Those concerns about Patrick O'Connor representing tribal opponents in this matter.

Do you recall how you were able to—how you came up with this information about Mr. O'Connor?

Answer. I don't remember.

Question. But in August of 1996, you remembered events that occurred back in the spring of 1995; is that correct?

Answer. I wouldn't—I can only tell you that what I wrote here I would have—would have been based on my recollection and on whatever documents I thought necessary to be able to write a truthful and accurate memorandum. I don't remember how much of it I remembered off the top of my head and how much I had to reconstruct from documents.

Question. Did you have documents about your meeting with Mr. O'Connor and Mr. Collier in the early spring of 1995?

Answer. I had—I know there is one document in my file which has been produced that was a fax cover from—I don't remember, it might have been O'Connor or somebody in his firm to Collier asking for a meeting, and I had a copy of that in my file, and I know the document's been produced. I assume, without remembering, that I would have gone through my file to make sure that I had this as accurate as possible.

Question. And aside from that document, I'm just trying to get a sense of how you recalled what occurred in that meeting. Here we are about a year and a half after you wrote this memo and you aren't recalling much. I'm trying to figure out how you were able to recall when you wrote this memo in August of '96, events that happened a year and a half before that. I was wondering if you could help me out on what items might have assisted your recollection.

Answer. Well, even here, I don't recall much from the meeting, to be honest. I just recall that there was a meeting. I have a vague recollection of the meeting which I testified to in the Senate deposition as well, but I didn't take notes. I frankly didn't know the issue that well, very well when the meeting occurred, and I don't say much about it here either. I don't have a strong recollection of the meeting. I remember that the guys came in, I remember that Collier gave them a meeting as a courtesy.

Question. Do you recall if Mr. O'Connor mentioned anything about the opposing tribes being Democratic contributors?

Answer. No, I have no recollection of any statement to that effect.

Question. You have no recollection, but do you know if—

Answer. I don't not believe—I believe that I would remember that, because I would have thought it was an incredibly stupid thing to say, and I think I would have remembered that.

Question. Are you aware of Mr. O'Connor, comments that February—being made in the February 8th meeting where Mr. Duffy was present?

Answer. I was not in that meeting.

Question. But are you aware of those comments?

Answer. No.

Question. No one ever told you about the comments that had been made in that February 8th meeting?

Answer. No.

Mr. ELLIOTT. Which comments, Ms. Comstock?

Ms. COMSTOCK. That the opposing tribes were Democrats.

Mr. ELLIOTT. Do you have information to that effect, or are you stating that that comment was made?

Ms. COMSTOCK. I'm asking if she ever heard any comment to that effect out of the February 1995 meeting.

Mr. ELLIOTT. Go ahead.

The WITNESS. No, I don't—I have never heard that.

EXAMINATION BY MS. COMSTOCK:

Question. And to this date, have you ever heard anyone tell you anything about Mr. O'Connor making those types of comments, that the opposing tribes were Democrats and that they had been DNC contributors?

Answer. I'm sorry, during what time period?

Question. At any time, up to the present. Even last month, if Mr. Duffy or if anybody you know said, boy, Mr. O'Connor was always making those kinds of remarks and that was stupid or why did he say that or I remember him saying that; do you have any recollection of anybody ever saying anything to you about Mr. O'Connor's remarks about the opposing tribes being Democrats or being contributors?

Answer. At some point after the litigation was filed I was made aware that that was an issue. I don't remember how or when, but that that was an issue in the litigation, but during the time period in which we were discussing this decision, I was not aware of anybody—

Question. What I'm trying to get at is a sense of knowledge if anyone ever expressed to you, anybody you know, a sense of knowledge about Mr. O'Connor making such remarks.

Answer. Um, the only knowledge I have about remarks like that is that at some point in the litigation somebody faxed me a copy of a letter that somebody sent to Ickes, and I don't remember if it was O'Connor or not, and it should also be in the record. It was in my files. It was in the litigation. That's it.

Question. This is the May 8th, 1995, letter to Harold Ickes?

Answer. Yes.

Ms. COMSTOCK. I will go ahead and make that Deposition Exhibit No. 9.

[Sibbison Deposition Exhibit No. 9 was marked for identification.]

EXAMINATION BY MS. COMSTOCK:

Question. Other than this letter, which is EOP 64262 through 64, and it also has another Bates Stamp number on the bottom, HUD FOIA, 8 through 10, and on the second page of this document it does—item number 5, it says, all—number 4, I'm sorry, all of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC in the 1992 Clinton-Gore campaign committee. There are a number of—there's five items here which he identified as relating to the politics involved in this situation.

Answer. Uh-huh.

Question. Did you ever discuss this letter with anybody?

Answer. I don't remember.

Question. And again, how did it come to your attention?

Answer. It was sent to me in the context of, I believe it was sent to me in the context of litigation because I think the U.S. attorney handling it wanted to know if I had ever seen it before.

Question. Okay. And—

Answer. I'm sorry, so the answer to the previous question would be I believe I would have answered the question to the U.S. attorney, no, I have never seen it before, but I don't—

Question. But did you discuss the general topics raised in the letter with anybody?

Answer. I don't recall having any conversations within the Department of the Interior about this letter with anybody.

Question. And do you know if this was—if this letter was forwarded on to Mr. Duffy or to Mr. Collier, if they had left at that time, to ask them about it?

Mr. ELLIOTT. Are you talking about after the litigation was filed?

Ms. COMSTOCK. I'm talking about at any time if anyone, to your knowledge, ever forwarded this May 8th letter to Mr. Duffy or Mr. Collier, and if—

Mr. ELLIOTT. Ms. Comstock, you are going to have to be a little more precise. We are talking about a May 8, 1995, letter from Mr. O'Connor to Mr. Ickes that impacted or may have impacted, or which you would have liked to have impacted a decision that was rendered on July the 14th, 1995. Ms. Sibbison has testified that after the litigation was filed, it came to her attention, she doesn't know how, presumably from the assistant U.S. attorney in charge of the litigation asking her whether she had ever seen it. She also said she had not seen it at that time.

Now, if you're asking whether this was forwarded in the 1995 time frame, prior to the decision to Mr. Collier or to Mr. Duffy, then ask that question. If you're asking whether they got it in the context of the litigation, ask that question, please.

Ms. COMSTOCK. Okay.

EXAMINATION BY MS. COMSTOCK:

Question. Can you tell me—well, why don't I back up.

Do you have any knowledge about Mr. Duffy or Mr. Collier receiving this letter in the 1995 time frame?

Answer. No.

Question. Or having any discussions—I believe the record is clear in the Senate that you do not have any knowledge of Mr. Collier or Mr. Duffy ever having any discussions with anybody at the White House; is that correct, or maybe we should stay with Mr. Ickes?

Answer. That's correct.

Question. Okay. And then as to anybody in the White House, there are some phone calls that were made, to your knowledge, from Ms. O'Connor that you have testified about?

Answer. Correct.

Question. And other than Ms. O'Connor, do you know of any other contacts—any contacts made from the White House to anybody in your office?

Answer. No.

Question. About this Hudson casino application?

Answer. No.

Question. All right. And now, this is the 1995 time period, but at any time do you know—did you ever have any discussions with Mr. Collier or Mr. Duffy about this letter to Mr. Ickes?

Answer. I believe Mr. Collier was gone. I believe I received this in November, because the copy I have has a November 5th date on it from the U.S. attorney's office.

Mr. SADKIN. Of what year?

The WITNESS. '95, I think. I can't remember, but I remember it was November 5th. I believe Collier was gone by then, so the answer regarding him is no.

I can't remember when Duffy left, to be honest. I don't know if the U.S. attorney's office sent it to him, too.

EXAMINATION BY MS. COMSTOCK:

Question. You didn't send it to either of them?

Answer. I certainly didn't send it to Collier, because he wasn't there. It's possible that I showed it to Duffy. I have no recollection, to be honest, of it.

Question. Okay. We got a little bit off the track, but why don't we return to the letter and memos to Senator McCain.

We had previously entered into the record a letter from Mr. Corcoran of O'Connor and Hannan which did forward some information.

Mr. ELLIOTT. In this deposition?

Ms. COMSTOCK. Yeah.

The WITNESS. I'm sorry, what are you looking for?

Mr. BALEN. Here it is.

The WITNESS. Oh, yeah, it's part of another one. It's attached to something that it's not related to; isn't it?

Mr. BALLEN. Here.
The WITNESS. Thank you.

EXAMINATION BY MS. COMSTOCK:

Question. Again, this first paragraph, the events described in the Senator's letter, you're addressing this meeting that you and Mr. Collier had sometime in the early spring. Other than this report from the financial consultants, which you reference here, is it your testimony you don't have any other recollection of any matters discussed in this—

Answer. At the meeting, at the February 8th meeting with Collier?

Question. No. You have talked about, this is referencing an early spring of 1995 meeting. I don't know—I don't think that's the February 8th meeting. You weren't at that.

Answer. I'm sorry, I have completely lost the thread here. Can you say that again?

Question. I'm just trying to get a sense of if you have any other recollection about this early spring '95 meeting that you and Mr. Collier had with Mr. O'Connor.

Answer. About the meeting itself.

Question. Other than what's expressed in this memo.

Answer. The only other recollection I had about the meeting is that I had an off-hand conversation with Collier in the hall afterwards about whether or not opposition from other tribes should be, and the degree to which it should be a factor in making these decisions, and that it was Collier's view, if I remember correctly, that competition among tribes should not be a significant factor in making these decisions.

Question. And did you express to him your views on that?

Answer. I agreed with him.

Question. And do you know if those views were expressed to Mr. O'Connor during the meeting?

Answer. I don't remember.

Question. And do you know if those views of yours and Mr. Collier were expressed to anybody else in the course of these discussions?

Answer. I certainly—

Question. About the Hudson application in general?

Answer. I certainly expressed that view during the course of the meetings for my own part. I didn't speak for Mr. Collier, and he was not, to my recollection, significantly involved in the process.

Question. Okay. And then in the next paragraph, it says, the 4th event, which I assume is referring to again, the July 19th, 1996 letter and the fourth bullet there of Senator McCain's letter, it says the 4th event concerned a letter dated April 25th. Then you go on to say that you were not aware of the letter at the time and that this April 25th time frame was—is that correct—because your memo says April 25th, 1996. Secretary Babbitt's, the letter to Secretary Babbitt from Senator McCain makes this an April 25th, 1995 memo. Was that just a typo of yours?

Answer. I don't know. Probably, but without seeing the document, I don't know. I mean I assume that it is, but without seeing the document, I can't tell you for sure.

Question. And actually, the important thing here, and I believe, I mean Senator McCain's letter does show an April 25th, 1995 reference here, and I think the important thing here that I wanted to ask you about is you have a sentence in the second paragraph that indicates this was well after the decision was made to deny the three tribes' application. I was wondering, given you saying the decision was made apparently well before April 25th, if that assists you in placing a time when this decision was made.

Mr. ELLIOTT. Read this paragraph carefully.

The WITNESS. Um, it says that we had not heard of the letter until well after—what this sentence is saying is that we had not heard of this letter or seen a copy of it until well after the decision was made to deny the three tribes' application, because we received it during the course of the litigation.

EXAMINATION BY MS. COMSTOCK:

Question. Okay. And I'm not really addressing the letter itself; I'm more addressing the fact that—your representation that the decision was made to deny the three tribes' application well before this letter, April 25th, was well after—

Mr. ELLIOTT. That's not what she testified to. She just testified that what she meant in this letter was this was well after the decision was made to deny the three tribes' application is not referring back to the April 25th letter, whether it is 1995

or 1996; it's referring back to when she or the department saw or first heard of the letter, which was sent to them by the U.S. Attorney's office after the litigation was filed, which clearly was after the decision was made.

Ms. COMSTOCK. Okay. Then that does clear that up. Thank you.

EXAMINATION BY MS. COMSTOCK:

Question. And then going down to the fourth paragraph where you are referencing the 10th bullet?

Answer. Uh-huh.

Question. Conversations with Jennifer O'Connor?

Answer. The bullet that says an Ickes agent of O'Connor, et cetera?

Question. Yes. I mean I know you did testify at length about this in the Senate, so I don't want to go into a lot of detail over it, but there are some memos in May of '95 and then in June of '95. Can you explain to us what you're responding to, how the May 1995 contacts with Ms. O'Connor came about as opposed to the June 1995 contacts which appear to be generated by some requests to respond to letters?

Answer. I don't remember the exact dates. Based on the documents that I have seen, this, this was written when I had not seen any White House documents and I did not know they existed. So in other words, when I went back and had to reconstruct the timing of this to answer Senator McCain's questions, I didn't have those White House documents to figure out the chronology of when I talked to Jennifer. So the only thing I had was my June 26th memo to Jennifer providing drafts of responses to the Minnesota delegation letter.

Subsequently, now that I have seen the White House's memos, which I didn't have before, and reconstructing the time line, Jennifer called, appears to have called in late May or early June. I don't have a specific recollection of on what dates, but during that time period, started this dialogue about this issue and wanted to learn something about it.

So this paragraph that I wrote for the McCain letter reflects the fact that I was having to reconstruct it from my own files and I did not—all I had was my memo to Jennifer and that's all I remembered.

Question. At the time of responding, doing this memo, were you also assisting the Secretary in responding to Senator McCain in his letter also?

Answer. In the August—

Question. 30th letter? Did you help assist with that draft also?

Answer. I saw it before it—I think I saw it before it went out.

Question. Do you know who drafted it?

Answer. I don't.

Question. Do you know if it was somebody from the Solicitor's Office or the Secretary's Office?

Answer. I don't know.

Question. Now, it was your testimony that Mr. Leshy had asked you to prepare your memo; is that correct?

Answer. Uh-huh.

Question. Did you talk with the Secretary about it at all?

Answer. Me, personally?

Question. Yes.

Answer. No.

Question. Did you talk with anybody else in the office about preparing your memo?

Answer. Not that I recall. If Duffy was still there at that time, I probably would have talked to him, but I can't remember when he left. I think he was gone by then.

Question. But do you have—I mean whether he was there or not, I mean did you call anyone outside—did you go back to Tom Collier, who had clearly left at that point, or go back to anybody else about their recollection?

Answer. I did not—I personally did not talk to Collier about this. It's possible that I talked to Duffy about it. My guess is that the Solicitor's Office contacted them, Collier and Duffy, rather than me doing it.

Question. Do you recall them asking you to do it that way, or not contacting them yourself?

Answer. I don't recall.

Question. But do you recall talking with anybody else in the Secretary's Office about this, other than—I mean whether or not Mr. Duffy was there at that point you—

Answer. It—no, I don't recall. Really there's no one. The only other person that it's even possible that I would have discussed it with is the Chief of Staff. I can't think of anyone else in the Secretary's Office.

Question. And who would that be at that time?

Answer. Ann Shields.

Mr. SADKIN. Do you have any memory of discussing it with Ms. Shields?

The WITNESS. No, I don't.

Mr. SADKIN. You're just speculating you might have talked about it with the Chief of Staff; is that correct?

The WITNESS. Uh-huh.

Okay. Well, we must have sent it to him.

I don't know—the statement that I have made here is that Mr. Anderson and Mr. Collier and Mr. Duffy, who left the department in July of 1996, that answers that question, agree with the recollections I set forth here. I do not remember the mechanism by which we came to that conclusion.

EXAMINATION BY MS. COMSTOCK:

Question. Was this a document that you prepared yourself?

Answer. Uh-huh.

Question. Do you know—

Mr. ELLIOTT. You have to answer yes or no.

The WITNESS. Yes, sorry.

EXAMINATION BY MS. COMSTOCK:

Question. Do you know if this was forwarded to them personally to review, given that you're representing that they agreed with these?

Answer. I don't have—I do not have an independent, clear recollection that it was, but it strikes me that it would have been, or we would not have made this statement.

Question. Do you recall discussing this then with Mr. Anderson, who is also identified there?

Answer. Again, I think that we forwarded to him to review to make sure there was nothing in it that he disagreed with. I don't recall specifically talking to Mr. Anderson.

Mr. SADKIN. Do you know that it was forwarded to them? Again, you—

The WITNESS. Well, let me say this. I would not have been comfortable signing it and would not have signed it if I didn't believe that they agree with the recollections I set forth here. I don't remember what the mechanism for—I don't remember if we sent it to them, if, you know, somebody read it to them on the phone, if they came over and read it, I just don't know. I don't remember. But I would not have signed it if I didn't think that this was accurate.

EXAMINATION BY MS. COMSTOCK:

Question. Were you aware of similar inquiries going over to Harold Ickes or the President at about the same time?

Answer. Yes.

Question. And how did you become aware of that?

Answer. I don't know, but I know that I had a copy of the letter that was sent to Ickes.

Question. And do you recall anything about how you got that letter?

Answer. No.

Question. Do you know if Ms. O'Connor or anybody forwarded it to you, or any discussions you had with anybody at the White House about it?

Answer. I didn't talk to anybody at the White House about it. I don't—

Question. Do you have a recollection if somebody at the Interior Department gave you the letter?

Answer. Yes.

Question. But you don't recall who?

Answer. No. I assume it would have been from the Solicitor's Office, but I—

Question. Was it your understanding that they were coordinating with the White House a response with Mr. Ickes?

Answer. I don't know.

Question. Do you recall when you got that? I mean did you get that letter at the same time you were preparing your response?

Answer. It was in the same time period. I don't know if literally it was on the same day, but it was in the same time period.

Question. So at the time when you were preparing your—the memo where you're recounting the events in an attempt to respond to Senator McCain and you are assisting the Secretary to prepare a response, you were aware that Mr. Ickes—the White House, I think the letter was actually sent to the President, and then Mr.

Ickes actually responded, but you were aware that that was also going on at the same time?

Answer. Yes.

Question. Do you know of any discussions that went on between anybody at the White House and the Interior Department about the responses?

Answer. I don't have personal knowledge about it, no.

Question. Do you have any knowledge of it?

Answer. I don't, I don't.

Question. Okay. Did you have an opportunity to review the Solicitor's memo prior to this package going to Senator McCain?

Answer. I believe that I did, although I don't have a specific recollection of it.

Question. Do you have any role in assisting the Solicitor in how he was going to recount these events?

Answer. I don't believe that I had a role in the drafting or editing of the Solicitor's memo. I believe that I read it before it was sent out, but I don't, I don't think I had any hand in writing it.

Mr. ELLIOTT. Ms. Comstock, which events are you referring to in the Solicitor's memorandum? Are you referring to events in the Solicitor's memorandum?

Ms. COMSTOCK. No. I'm just asking her if she recalls assisting writing or editing of the Solicitor's memo. I'm not referring to anything in particular there.

Mr. ELLIOTT. All right.

EXAMINATION BY MS. COMSTOCK:

Question. Do you recall if there was anything that you objected to in how things were being represented in either the Secretary's letter in your memo or the Solicitor's memo?

Answer. No.

Question. Or having any discussions or disagreements on how to characterize something or how to best explain it?

Answer. I don't remember having a problem with this letter, no.

Question. Now, directing your attention to the Secretary's letter himself, did you ever discuss anything about the Eckstein assertions and how they were going to be represented, directing your attention to the bottom paragraph there of the first page where it's discussing Mr. Eckstein. Do you recall any discussion about how that meeting would be represented?

Answer. No.

Question. You didn't have any discussions with anybody about that meeting in preparation for this package?

Answer. No.

Question. Again, you don't know who wrote the Secretary's letter for him, but your understanding is that it may have been the Solicitor's Office?

Answer. That's correct.

Question. Do you know, would that be John Leshy then who probably would have written it?

Answer. Possibly, but I don't know. I mean at the time I probably did, but I don't remember who wrote it. I know that I didn't write it.

Question. And do you recall if Mr. Leshy had met with the Secretary to discuss this or how he would represent the wording of this?

Answer. I don't know, I don't recall. I don't know.

Question. Do you know if Mr. Duffy was consulted as to how the represent the meeting with Mr. Eckstein?

Answer. I don't know.

Question. Is there anything else about this letter in this package that Senator McCain—the response to Senator McCain's letter that you recall discussing with anybody at the Interior Department, anything that stands out in your mind?

Answer. No.

Question. And then other than just general knowledge about the letter that Harold Ickes was writing, do you recall having any discussion with anybody about how Mr. Ickes was characterizing these matters?

Answer. No. I was not involved in that at all.

Question. Okay.

Ms. COMSTOCK. Off the record.

[Discussion off the record.]

Ms. COMSTOCK. I think we had previously mentioned the May 18th, 1995 memo. I will make that Deposition Exhibit Number 10.

This is Exhibit No. 10, the May 18th, 1995 memo for Harold Ickes from Jennifer O'Connor and the subject is Indian gaming in Wisconsin.

[Sibbison Deposition Exhibit No. 10 was marked for identification.]

EXAMINATION BY MS. COMSTOCK:

Question. I think you had previously indicated you had not seen this document at the time, is that correct, at the time of the memo?

Answer. I have never seen this before. Did they show this to me in the Senate deposition?

Ms. COMSTOCK. We can go off the record for a minute.

[Discussion off the record.]

EXAMINATION BY MS. COMSTOCK:

Question. And you were asked about this in the Senate deposition, and so we can just refer to pages 105 through 106—

Answer. Actually, can we go off the record again for a minute?

Ms. COMSTOCK. Sure.

[Discussion off the record.]

EXAMINATION BY MS. COMSTOCK:

Question. We are now addressing the May 18th, 1995 memo. Can you tell us if you have any knowledge about the matters discussed in this memo?

Answer. The only knowledge I have about the matters discussed in this memo are the factual information regarding the Hudson application.

Mr. SADKIN. Does this memo accurately reflect the department's knowledge and opinion of the Hudson matter?

The WITNESS. It's oversimplified, but the three indented paragraphs, it's oversimplified, but accurate.

EXAMINATION BY MS. COMSTOCK:

Question. We had—

Answer. I'm only talking about these three paragraphs now. I don't agree with the character—some of the characterizations, and I have no knowledge about some of this other stuff.

Question. Okay. You are pointing, I guess the paragraph that is right after the three indented ones, is that one of the ones you don't agree with?

Answer. It's not that I don't agree with it; it's I think it's so oversimplified it does not accurately capture the discussion we were having on this issue. For example, it does not discuss the fact that the gaming operator itself was a multimillion dollar operation, and it's misleading the way it's written. While the three tribes—the three very poor tribes may not have been able to hire a lobbyist, the dog track owners certainly were and certainly did.

Question. Do you recall discussing with Ms. O'Connor the hiring of big lobbyists for the wealthier tribes?

Answer. Only vaguely, and I think it was more in the context of public perception. But I have only the vaguest memory—and actually, to be honest, I don't know how much of it is because I have reread stuff over the last month or whatever. So I don't, I don't have a clear recollection of the actual telephone call.

Question. Now, we had previously looked at a letter that was to Harold Ickes from Jennifer O'Connor on May the 8th. This is a memo from Ms. O'Connor where she is discussing Patrick O'Connor—the information that Patrick O'Connor had sent her. Do you recall in your discussion with Ms. O'Connor discussing Mr. O'Connor?

Answer. No, absolutely not. I mean I recall that I did not have a discussion.

Question. About Patrick O'Connor?

Answer. About any—Patrick O'Connor or any other lobbyist.

Question. Okay. Do you know where—because she's saying here in the memo, some department staff think the bottom line here is Minnesota and Wisconsin tribes, who were benefiting enormously from gaming, don't want the competition and are able to hire bigger lobbyists.

I mean she's saying some department staff. I mean that's not referring to White House people. So do you know anyone else she would have talked to to get that impression, that presumably Department of Interior staff?

Answer. No. This—I don't think she talked to anyone else at the department; I think she talked just to me. What I was—I don't remember exactly what I said to her. There was a concern that it appeared that the Minnesota tribes who were wealthier could afford to fight this, whereas the poor tribes could not afford to fight it, and there was a concern about the perception and whether or not that was true. On the other hand, the more we looked into it, the more we understood also that

the gaming contractor was—in other words, the person who already owned the dog track, the company that owned the dog track, was not poor and was well able to hire expensive lobbyists and attorneys and did so. The public perception, however, was that it was poor tribes versus wealthy tribes.

Question. Now, would the other letters, the draft letters that you had sent over to Ms. O'Connor in June which you testified to in the Senate, and I won't go into those at any length again, but you had indicated that you were responding to her request to respond to Members of Congress who had written to Mr. Ickes, and she wanted to be able to respond.

Answer. Uh-huh.

Question. Do you know why you were responding to Ms. O'Connor in May of 1995, whether she told you what was—why she needed to know about this?

Answer. She did not tell me why. We were receiving—I can tell you, though, that I assumed that they were receiving congressional pressure because we were. We had over the course of this review period at least 14 letters from Members of the House and Senate on this issue, and we were under enormous pressure from Congress, and my recollection is I assumed that she was doing the same thing. And then I when I got the delegation letter subsequently, it only confirmed in my mind that that's where this was coming from. I didn't ask her and she didn't tell me. I had no knowledge about other sources, or why she was asking or other sources. It was getting a fair amount of press in the local press in Wisconsin and it was getting a lot of attention on the Hill, and I assumed that that's why she was asking, but I—

Question. And what was your understanding of what type of information she needed?

Answer. Again, I don't remember the exact conversation very well, but she just wanted to understand what the situation was.

Question. Now, you know, Ms. O'Connor is not in Congressional Affairs, is she?

Answer. I don't know.

Question. At the White House?

Answer. I don't know.

Question. Do you know whose office she was in?

Answer. I know now. At the time I didn't really—

Question. Did you get requests from Harold Ickes' office frequently about the status of various things in the department?

Answer. I had a recollection that I had talked to her before, although I don't remember about what, and I never talked to her again. I presume that she left.

Question. She left in approximately December of '96. Do you recall if you talked to her at any time after this decision for any reason?

Answer. I don't believe that I did, but I don't remember.

Question. All right. Who did—who would you normally—did you talk with a lot of people over at the White House on a regular basis, or what offices would you deal with at the White House?

Answer. People would occasionally call—I am retrying to remember that time period.

Question. Did you deal with Congressional Affairs? Would they be the people to call about congressional inquiries, usually?

Answer. You know, I just never thought about it. She contacted Duffy, Duffy asked me to return her call. It didn't strike me as anything other than an inquiry that somebody asked Ickes a question, I assumed, and he needed to be able to answer it. But I just didn't—because she was not exerting any pressure on me to do anything one way or the other, it wasn't something I thought about one way or the other.

Question. Did you ever speak with Loretta Avant who was at the White House?

Answer. I worked with—I have spoken to Loretta Avant on other issues, I don't believe I spoke to her on this issue.

Question. So on the whole Hudson casino application, she never discussed anything related to that with you at any time?

Answer. I don't believe so. I don't believe so.

Question. Do you recall if you ever spoke to any Congressional Affairs people about the Hudson casino application?

Answer. In the White House?

Question. Yeah.

Answer. I wouldn't necessarily know what office somebody was from, but I don't believe I talked to anybody else in the White House about this issue.

Question. And I'm sorry, I'm a little unclear—

Answer. Oh, yeah. I'm sorry. I spoke to David Myers who I think was an intern for Jennifer O'Connor, which I did not understand at the time that he was an intern.

Question. Okay. I think you testified to that in the Senate, and I won't go back into those documents.

Do you know—I'm sorry, it is a little unclear whether you knew if Ms. O'Connor had any connection with Mr. Ickes' office?

Answer. I knew she was from his office.

Question. And in the third paragraph—

Answer. But in answering your question about Congressional Affairs, I don't understand—I don't know how the White House is structured. I don't know if she does Congressional Affairs for Ickes, or—I mean I don't know how to—I can't answer that, because I don't know how that office is structured.

Question. Mr. Ickes is not head of Congressional Affairs, or has never been, to my knowledge.

Answer. Well, I'm not in Congressional Affairs, but I talk to people on the Hill all the time, so I'm having a hard time answering your question.

Question. I'm just trying to get a sense of how often Mr. Ickes' office in particular was calling your office on matters—when you said you had never dealt with Jennifer O'Connor after this, was there ever anybody else from Mr. Ickes' office that called you about anything to date? Actually, he left about the same time Ms. O'Connor did, the end of December, early January of '97, I believe.

Answer. I just don't remember. I don't remember someone from his office calling me directly, but as I said earlier, they wouldn't be calling me directly necessarily anyway, they would have called Duffy and then I was the staff person that would have handled it from there.

Question. But was Mr. Ickes making calls weekly, monthly, daily, or anybody from his office? Was it sort of a frequent flyer thing or very rare occasion?

Answer. Something in-between, I don't know. I mean he wouldn't be calling me directly. He would have been calling—I don't think he ever made a call, anyway. I think Jennifer called Duffy about it. They would have been inquiries to Duffy, and I don't know the answer to how frequently—

Mr. SADKIN. Well, you did testify that you had spoken to Jennifer O'Connor about other issues.

The WITNESS. I think I have, but I can't remember what they were.

Mr. SADKIN. So this call didn't strike you as unusual?

The WITNESS. No, it didn't strike me as a big deal.

Mr. SADKIN. And they didn't exert any pressure?

The WITNESS. None whatsoever.

Mr. SADKIN. And they didn't take a position on the issue?

The WITNESS. No.

EXAMINATION BY MS. COMSTOCK:

Question. Has anyone ever discussed with you after the decision that calls were going to the White House about complaining about the decision after it had been made?

Answer. I'm sorry, say that again?

Question. Did anyone ever tell you that complaints were being made to the White House after the decision had been made? Did anyone ever communicate that type of concern?

Answer. The only way I would have received that type of information was in the context of the litigation when the litigation was filed, and I was told that the plaintiffs were alleging undue political influence, or something. I have never actually read the pleadings. Before that, no.

Question. But did anyone ever at the White House ever tell you about that?

Answer. No.

Question. Any information you had on that was only from the Solicitor's Office?

Answer. Correct.

Question. And did they—did anyone at any time ever express any concerns to you about the, you know, what the White House had done in regard to this?

Answer. No.

Question. At the time, and returning to, just briefly, Exhibit 8, which is the letter to Senator McCain and the attached memos, your memo and the Solicitor's, were you aware that that was going to be filed with the civil case in any way, the representations made in that?

Answer. No.

Ms. COMSTOCK. Let me make this Deposition Exhibit Number 11. This is the October 10th letter that Secretary Babbitt did to Senator Thompson.

[Sibbison Deposition Exhibit No. 11 was marked for identification.]

EXAMINATION BY MS. COMSTOCK:

Question. Are you familiar with that letter?

Answer. Yes, I am.

Question. Did you assist in any way in preparing that letter?

Answer. I saw an early draft of it and made some suggestions.

Question. Did you discuss with anyone the various representations that had been made about Mr.—the meeting with Mr. Eckstein?

Answer. Yes, I did.

Question. And who did you discuss that with?

Answer. Jane Leiter and Congressional Affairs.

Question. And could you describe those discussions?

Answer. I expressed that I thought that the paragraph describing the Eckstein meeting with the Secretary was inartfully written.

Question. And could you direct our attention to which paragraph you are referring to?

Answer. It's the last paragraph on page 1.

Question. And why did you feel that way?

Answer. It was my personal opinion—I was not in the meeting with Eckstein and I was not in any of the discussions with the Secretary about the meeting, and so this is just my personal opinion. It was my personal opinion that the letter that went to Senator McCain is more accurate because it's closer in time to the event, that Mr. Eckstein has made a statement that happened a long time ago, and that the Secretary doesn't have necessarily have a clear recollection of it, one way or the other.

So my personal opinion is that the McCain letter, because it was done closer in time was more accurately done, and that this letter reflects the department's desire to get out the substantive information that is on page 2, because it was our view that if everybody understood the substantive information, it would explain the decision, and that the inartful wording on page 1 was an oversight, because everybody was so focused on getting all the substantive information on page 2 correct. It's also my personal opinion that this letter is not inconsistent with the first letter in that in the first letter, the Secretary said that Mr. Ickes never gave him instructions as to what to do, and he reiterates that in this letter.

Question. When you say—what is it you're referring to that you thought was inartfully worded? Is that the paragraph that says I do believe that Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct?

Answer. I believe that's inartfully worded.

Question. And why is that?

Answer. It's just my personal opinion that it happened 3 years ago, Eckstein has made a statement, and the Secretary is cutting him a break because he doesn't remember.

Question. And why do you think that? Did you discuss this with the Secretary?

Answer. No. This is my personal opinion. I have never discussed this letter or the other letter with the Secretary. I have no knowledge, no personal knowledge of why it was drafted this way. I do have personal knowledge that it was page 2 that everybody was focused on, and that page 1 was inartfully written and not the focus of everybody's attention who was working on this letter. Page 2 was what everybody was trying to make sure got out.

Question. Do you know who was writing page one?

Answer. I do not.

Question. Were you surprised by what is related in that bottom paragraph on page one, in particular where the Secretary writes that, you know, Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct, and that I used this phrase simply as a means of terminating a discussion and getting him out the door. Did that make sense to you?

Answer. It made sense to me that he would say something to get him out the door, yes. These people were persistent and not professional in the manner in which they were presenting their case.

Question. Were you surprised the Secretary was saying that he said something to the effect that Ickes wants a decision?

Answer. I don't remember. I don't remember what my recollection was.

Question. And did you ask yourself why would he say something about Ickes wanting a decision, where would that come from? Did you have any idea of where that would come from, why the Secretary would say something like that?

Answer. I believe that Mr. Eckstein was persistent and unpleasant in his attempts to reverse a decision that was well based on the merits. I have no personal

knowledge whatsoever of what the Secretary said to him to terminate this discussion. I believe very strongly that the Secretary is correct and being very truthful in his statement in this letter about Mr. Ickes never gave me instructions as to what this department's decision should be nor when it should be made, and in my personal opinion that is the operative sentence on page one, and whatever he said to Eckstein is, in my personal opinion, much less relevant than whether or not Ickes actually called him on this issue, which he did not, which is why I think—

Question. And that is your opinion based on—

Answer. This is unartfully worded because I don't think this paragraph is relevant or necessary to this letter. This letter has to do with whether or not we received pressure from the White House to make a certain decision or to make it on a certain day. The answer to both of those questions is no. Whatever happened between the Secretary and Eckstein on that day, in my personal view, is irrelevant to the substantive question of whether or not the White House exerted pressure on us, which they did not.

Question. And, I'm sorry, I think you probably have addressed this a little before, did you ever discuss the meeting with Mr. Eckstein that Mr. Duffy had, did you ever discuss that with Mr. Duffy?

Answer. Briefly.

Question. All right. And what did he say about it, what did he tell you about his meeting with Mr. Eckstein, on this same day, July 14, that the Secretary's statement is referring to?

Answer. I don't remember particulars. I remember that it was unpleasant, and I just remember it was unpleasant and Eckstein left his office and went downstairs and used a pay phone and call upstairs and demanded a meeting with the Secretary because he didn't like what Duffy told him.

Question. Now you said you had expressed the concern about this particular paragraph to Jane Lyder. How is that spelled, for the record?

Answer. L-Y-D-E-R.

Question. Did you discuss this with anybody else?

Answer. I did not.

Question. Do you know if you have any memos or anything, any drafts of this letter?

Answer. Do I what?

Question. Do you know if you have any memos or notes or drafts of this letter?

Answer. I don't have any, no.

Question. I believe you testified you do stay in touch with Mr. Duffy on a regular basis?

Answer. Yes, I do.

Question. And how often do you talk with him?

Answer. I was talking to him a few times a week until recently. We have not been talking very much. I haven't talked to him in quite some time.

Question. And were you aware of his work that he does for the Shakopee tribes, which is one of the opposing tribes for this application?

Answer. I am aware Shakopee is one of his clients, I recused myself from everything he works on.

Question. You recused yourself for everything he works on?

Answer. Uh-huh.

Question. Is he currently lobbying the department on any matters relating to Shakopee, to your knowledge?

Answer. I don't know. I don't involve—I don't know.

Question. All right. And Mr. Collier, were you aware of his also working—

Answer. I was aware that Shakopee was a client of one or both of them but I recused myself. Because of my relationship with Duffy, I felt that, and my friendship with Duffy, I felt it would be improper for me to be involved in any issues he was representing tribes on, and so I had to recuse myself from anything he is working on.

Question. Is that a formal written recusal you made?

Answer. No, but if you ask anybody in the department who works on Shakopee issues, they will tell you because every time somebody tries to talk about it when I am around, I absent myself.

Question. What is the policy as to how a recusal works at the department?

Answer. I don't believe I am required to recuse myself. It was my own decision.

Question. You let your superiors know you were going to recuse yourself?

Answer. No, I didn't. I was basically—there was an interim period of time before Duffy was gone and before he was replaced with a new counselor where I was essentially running gaming by myself and I let everybody know, staff know, who was

working in gaming, that I didn't want to know anything about matters that Duffy was working on or Collier.

Question. How did you learn they were representing the Shakopee?

Answer. Oh, I don't remember. One of the guys in the Solicitor's Office probably told me, but I don't remember.

Question. They didn't tell you themselves?

Answer. Oh, yes. I'm sorry, thank you. Yes, they did, because John called me and wanted a form letter, asked me to help him get a form letter because the rules are when you leave the department and you represent a tribe, you have to write to the Secretary—help me out. He knows better than I do. But you have to write the Secretary and say I am representing Shakopee. I don't know what the magic language is, but he was looking for a form letter, I sent him one and he said he would be working on Shakopee.

Question. Okay. And were the representations that it was—?

Answer. I don't know what it is, because I have been on the outside myself. There is some standard by which you can decide what you—

Mr. ELLIOTT. This is sort of extraneous.

The WITNESS. Tim knows it much better than I do.

Mr. ELLIOTT. I can explain it because it is a part of my practice.

Ms. COMSTOCK. Sure.

Mr. ELLIOTT. There is a section of the United States Code which provides an exemption for former government employees from another section of the code, 18 USC 207, which has to do with former employment. 25 USC, I think it is.

455 I(j) provides that a former employee need not or does not come under the rubric of 18 USC 207, restrictions on outside practice after one leaves the government. The only condition is they must write to the head of the agency that they are representing an Indian tribe. It is only for Indian tribe representation.

EXAMINATION BY MS. COMSTOCK:

Question. Is that part of that that you have to—

Mr. ELLIOTT. You only have to notify the head of the agency that you are undertaking to represent. It doesn't have to be attorneys, it could be anybody, an Indian tribe.

EXAMINATION BY MS. COMSTOCK:

Question. Is there anything connected with whether or not—does it matter what their involvement was with a particular tribe while they were there?

Mr. ELLIOTT. 18 USC 207 prohibits employees from coming back representing outside parties on matters on which they worked while they were in the United States.

Ms. COMSTOCK. Okay.

Mr. ELLIOTT. Working for the United States. It has other restrictions. 25 USC 4—I think it is 450 I and then (j), little j, in parens, makes an exemption to 18 USC 207 in its entirety for representation of Indian tribes.

The WITNESS. So I misspoke on that.

Mr. ELLIOTT. No, she didn't entirely misspeak, because the canons of ethics might still affect what an attorney may do because the canons of ethics are not exempted by that section of the code, but at least in terms of the Federal law it was.

The WITNESS. I believe, actually, that is correct, and that that is the view that Duffy has taken because he has not worked on any issues in which he was previously involved. He was not previously involved in any Shakopee issues, and I think the canon of ethics does prohibit him from doing that.

EXAMINATION BY MS. COMSTOCK:

Question. And were you aware of the contribution that Mr. Collier had relayed to the DNC from the Shakopees?

Answer. No.

Question. Okay.

Answer. Not until this very second, no.

Question. So you had no knowledge of a 50 thousand or \$100,000 contribution that Mr. Collier brought to the DNC?

Answer. None whatsoever.

Question. Okay.

Mr. SADKIN. I'm sorry, do you have any materials on that or is that just an assertion from the Majority? I'm sorry, is that documented?

Ms. COMSTOCK. I believe it has been in the public domain, but, no, I don't have a document right here. I don't believe there have been any produced about—I don't think that we have received from the DNC the actual check or contribution to my

knowledge. That representation has been made. I don't think Mr. Collier challenges that. I'm not sure if the amount is clear, whether it is 50 or 100, but I think that is what may be in question. But if you can enlighten us on either.

Mr. SADKIN. Believe me, we can't.

EXAMINATION BY MS. COMSTOCK.

Question. Okay. This is an e-mail we received from the department. And I am not sure, given your representations today on what may or may not be answered. What I wanted to ask, this is an e-mail, I guess maybe if you could explain the message of traffic on top, it may be easier?

Answer. From Scott Keep, who is in the Solicitor's Office, DOI headquarters, March 21, 1997, at 7:47 a.m., computer information that I can't read, Priority: Urgent, a message to John Leshy, Solicitor, me, George Skibine, Dave Etheridge, Dave Moran, Troy Woodward, Tom Hartman, Hilda Manuel, Mike Anderson, Ed Cohen, regarding a recent decision in the litigation involving the dog track.

Question. Okay. And to the extent that you are permitted to discuss matters related to this, did this e-mail or this, you know, this event, the Judge Crabb decision, prompt any recollection or any discussion of events related to the dog track, the factual matters or recollections you may have had?

Answer. Not with me.

Question. Okay. As a result of this decision, were there any additional documents that were gathered or do you have an understanding of when documents were being gathered at the department?

Answer. I remember making my documents available to the Solicitor's Office, I don't remember when it was, and I don't remember whether they came back for more later. They know where they are, my assistant knows where they are, and I made them freely available to the Solicitor's Office, so I don't have a specific recollection of it.

Question. Do you know if then you would have been making your documents available back last spring, March, April, May, that time frame, as a result of this contact from Mr. Keep and Mr. Leshy?

Answer. To be honest, I don't remember when the document requests started in that litigation. I have never followed the litigation very carefully.

Question. I am not really getting at the litigation so much as the document gathering, more that I am trying to address the fact that the litigation occurred prior to our request. So I am trying to get a sense of when documents were gathered together and when a mass of documents were, you know, kind of together and when you had cleared through your files because presumably, as we ask for it and other parties do, it is subsequent to requests that you got on this. So I am not—I am just trying to get a sense of when the documents that you had on these matters were gathered in one place?

Answer. I know this doesn't answer your question very well but let me do the best I can with it. They were gathered the first time for the litigation, and I assume as a result of a traditional document request. I don't remember when that was. They were then recopied—I believe they were recopied again for the Senate document requests and then they were recopied again in their entirety for the House request when the department, as I understood it, made an effort to make sure that absolutely—they sort of started from scratch again and recopied everybody's files to make sure we absolutely had everything. So I believe my files have been reproduced at least three times.

Question. Okay. And do you know whose handwriting is on the document on the bottom of the page?

Answer. No.

Question. All right. And it looks like it says something to the effect of notify White House Counsel Office. You don't know whose handwriting that is?

Answer. I don't, I'm sorry.

Question. And Mr. Leshy, is he actually in the Solicitor's Office or is he in the Secretary's Office?

Answer. He is in the Solicitor's Office, and the Solicitor's Office is technically part of the Secretary's Office, is that right?

Mr. ELLIOTT. For some circumstances, yes.

EXAMINATION BY MS. COMSTOCK:

Question. So is he the key contact person from the Solicitor's Office working directly with the Secretary's Office then, he is the main person who would interface with your office?

Answer. Well, it depends on what issue it is and how high a priority it is. Certainly he is the person that the Secretary talks to, but on issues I work on, his staff would call me. I mean, once in a while he calls me directly, but frequently I work with his staff instead. So it depends on what issue, it just depends on what issue it is and how urgent it is.

Question. And do you have any knowledge of anybody notifying the White House Counsel's Office?

Answer. No.

Question. As a result of this decision?

Answer. No.

Question. Okay. And—

Answer. I have never seen this before, and I just really don't know anything about it.

Question. Did you not receive this e-mail then?

Answer. Oh, I must have received the e-mail because it says I did, but I have never seen this notation.

Question. This is presumably from somebody else's file who received this, other than you?

Answer. Right. And, in fact, I wouldn't have even kept this in my file, I mean, this e-mail is—I didn't think we were really going to be deposed and I don't think I even printed this out and kept it.

[Sibbison Deposition Exhibits No. 12 and 13 were marked for identification.]

Ms. COMSTOCK. There are two here, and it looks like one follows the other, so I will just put those together, and I will make those Deposition Exhibits No. 12 and 13. I will make the 2/18 one 12 and the one that has the time 3:58 p.m. on the top 13. We may want to start with the 2/18 one. Actually, I will give you the dates, it is April 8, 1997, April 9, 1997. Do you recall seeing this e-mail in general?

Answer. Only very vaguely.

Question. Okay. Do you recall any discussions you had regarding the congressional investigation of these matters that anybody had?

Answer. I'm sorry, I'm not sure I am following your question. In general?

Question. Yes, if you had any discussions with anybody about the congressional investigation of the Hudson Dog Track casino application matter.

Mr. ELLIOTT. You say with anybody, you mean discussions with congressional people or discussions inside the department.

EXAMINATION BY MS. COMSTOCK.

Question. With anybody?

Answer. I am sure I was running around going, oh, my God, I can't believe they are doing this, but I don't remember having a substantive discussion about—I don't remember having substantive discussions like, you know, what are they going to ask, what are they doing. I mean, it was news.

Question. Let the record reflect it was not Majority counsel who contacted anybody first over there, it was Minority counsel. The e-mail indicates that Mr. Ballen had contacted somebody here in this message traffic. I am unclear who. Do you recall any discussions about that?

Answer. I'm sorry, discussions about?

Question. This contact?

Answer. No, I don't, and to be honest, I am having a hard time following the e-mail.

Question. Perhaps if you could look at both of those, from your understanding of the message traffic, determine where you were in that process here.

Answer. The one from April 8 says that it is from Scott Keep, but the text of it says I do not know whether Burton's staff will make an inquiry but will refer them to Scott Keep if they do so. It appears to have been written by somebody else, I don't know who. And then, where it says "Susan, can you give this to Anne, I can't access her e-mail," and "Heather, can you give this to David, he is not on my system," those could be from somebody else. The way our e-mail works, unless you punch it in a certain way, it doesn't have different headers. Like mine, the next one, the way I punched it in, you can see I have forwarded this to David Hayes and John Leshy, and I literally just forwarded it, I didn't add anything to it, and you can see from my heading that I am—oh, Mike Anderson wrote this. All right. You can see from mine that Mike wrote this.

Question. Mr. Ballen is going to stay silent, not help us figure this out at all.

Answer. All right. If I am following the heading, Mike wrote the paragraph that says "I was contacted" and ends in "do," "if they do." Mike would not be giving—well, he could be saying to me and Susan to pass them on because he might not

have been able to get ahold of them. On this side, it is me passing it on to him and to Leshy and that is all. But when I pass it on, I think it shows where it is forwarded from. I don't really understand all this, unless Scott forwarded it to Leshy and Cohen. I don't know. I am having a hard time figuring this out. I can tell you this one is me forwarding this message to David Hayes and John Leshy. The message on here appears to be from Mike Anderson to me and Cheryl, to Scott Keep and Susan Kaslow. That leads me to think, possibly, this one is Scott forwarding Mike's message to Leshy and Cohen.

Question. Okay. And did you ever have any discussions with Mr. Anderson about whether or not he should be talking about this decision with Congress or how this was going to be referred, who could talk to us?

Answer. No.

Question. And did you ever have any discussions with anybody about who was the point person who was going to be handling this with Congress?

Answer. I have not had a discussion with anybody about it, no. I mean, most of my contacts have been through Congressional Affairs, but I have never received direction on it or had a conversation about it.

Question. Okay. Anything else, from either of these e-mails, that you have any recollection of any discussions that you had about matters that were related to the Hudson application?

Answer. No.

Ms. COMSTOCK. If we could just take a brief break, I think I am just about done.

[Recess.]

Question. Have you been contacted, aside from the civil suit, by the Justice Department or the FBI, in relation to this matter?

Answer. Yes.

Question. And when was that?

Answer. I don't know the exact date. Within the last—in the last 3 months, November maybe, I don't know the exact date.

Question. In the past few months?

Answer. Yes.

Question. Okay. And is that only on one occasion?

Answer. No, I have spoken to them on more than one occasion.

Question. Close together in time?

Answer. They wanted to interview me and did so and then they had follow-up questions and have called a couple of times with follow-up questions, and then I contacted them at one point because I knew that there was something incorrect in my Senate deposition that I wanted to correct.

Question. Okay. And, actually just in general, don't tell me what you told them, but today you have discussed a number of things that you corrected. Are there other matters in your Senate deposition that you need to correct for us?

Answer. Yes, I would like to correct one matter. Somewhere in here we are talking about the release of the document a day early, and I had not been through the record well enough to—okay, it is in and around page 62. I recalled that inadvertently a secretary had sent out a letter that announced the decision a day early, and in my Senate deposition what I remembered was that the actual decision letter was sent out a day early. To be honest, when I read it in the paper on another day, I thought, that is not what happened. I'm sure I didn't send out the decision letter because we didn't have control over it. The BIA controlled it and I couldn't have sent it out even if I wanted to, so I went back and rechecked my files, and in fact what had been sent out inadvertently the day before was basically a form letter, a copy of which I have with me, it is in your files, too, to the St. Croix Tribe indicating something to the effect of thank you for your letter expressing concerns about the Hudson Dog Track. As you may know, the department has declined to take it into trust. I trust this addresses your concerns. Sincerely, John Duffy. And I had that letter and I believe some other ones ready to go because the decision letter was done, pending this one last push from Eckstein and Moody, and I had just gotten stuff ready to go so that we could get the decision out. We were trying to get it out before Ada had to go up to Wisconsin, and a secretary sent it out. She just thought it was ready to go and she sent it out, but it was not the decision letter. So this whole discussion about when Mike signed the decision letter and all that is irrelevant because it wasn't right.

Question. And that is page 62, and however long that goes, to 63, I believe it is on, and 64 and 65?

Answer. I mean, I am completely flailing around in this because I didn't remember it very well. I just remembered the information had essentially gone out before it was supposed to because it wasn't going to be final until Eckstein had his last go-round and nobody believed, really, that he was going to be able to bring in new

evidence that would change our minds. If he had come in with new evidence, if he had come in with new evidence saying—you know, letters from the mayor and the town council and whoever else saying, yes, we really want it, the decision wouldn't have been finalized that day is my belief, but he didn't come in with any new evidence. He just wanted us not to make the decision we were making, and the decision was finalized.

Question. Okay. And are there any other matters that you need to correct for the record?

Answer. I can't remember. I don't think so.

Question. Actually, when you review your deposition, if there are additional matters, it is an open-ended question, if there are matters you need to correct, I would ask that you clarify that to the extent that you are able.

Mr. SADKIN. And you notified the Senate of that, is that correct?

Mr. ELLIOTT. We have not notified the Senate. We just discovered it this weekend. She was not given—to my knowledge, and I didn't sit at the first deposition, she was not given an opportunity to review it.

The WITNESS. It was in a newspaper article quite some time ago, and that is when I called the Justice Department and said this isn't right and I sent them—to answer your question about the Justice Department, I sent them a copy of the letter that did in fact go out early.

EXAMINATION BY MS. COMSTOCK.

Question. Was it your understanding only one letter went out early then?

Answer. Yes.

Question. How did the one letter end up being the one that went out?

Answer. I had prepared it, Duffy had signed it, so the Secretary thought it was ready to go. She didn't realize I meant to hold it. I didn't realize Duffy had signed it. They just got ahead of me and she thought it was ready to go and she faxed it to the St. Croix Tribe.

Question. Were there any—like was there a group of letters that were going to be sent out when the decision was made? I am just wondering why there was only one.

Answer. I think I was preparing letters over time but I don't have a specific recollection of it. I don't know why this one went out. I mean, as soon as I realized she sent it out, I knew that it wasn't supposed to go out and I caught it. But I don't really remember, to be honest. I wrote a lot of—we got a lot of correspondence in the Secretary's Office. We got 80-odd letters, I think, in opposition to the dog track, that were directed directly to the Secretary, and I wrote most of the form letter responses to them and had been turning them out over time. Only closer to a final decision I was holding some of them. It was easier to say the matter has already been taken care of, and why this particular one got finalized and sent out was just a fluke. I can't explain it. I wasn't there when she did it, otherwise I would have caught her and she wouldn't have done it. So I don't really know how it happened.

Question. And I believe we have received a copy of the letter, correct?

Answer. Well, it was in my files that had been produced, so it may not have been identified as—in the way I just described, but you have it, because it was in my files.

Question. Do you have a copy of that with you?

Mr. ELLIOTT. No, I don't.

Ms. COMSTOCK. Maybe we can clarify that afterwards to make sure we have it.

EXAMINATION BY MS. COMSTOCK.

Question. Do you know if you produced it with a cover sheet that had been sent with it?

Answer. Yes, the cover sheet is what is—what I had in my files was not the original letter dated the 13th, but a new letter dated the 14th with a cover sheet saying, you know, the one produced yesterday was erroneous and shouldn't have been sent out, this is the one with the correct date, the decision was made today, please destroy the old one, this is the correct official response. So it is actually the fax cover sheet that explains what happened, rather than the letter itself.

Question. Do we also have the cover sheet of the first one that was sent out, do you know, as opposed to the second one?

Answer. No, I don't think I kept it. It is not in my files which means I did not keep it.

Mr. ELLIOTT. Do you want a copy or do you have that?

Ms. COMSTOCK. I believe we do have that, but can we just maybe make a copy. I didn't bring it today to question you about it, but since we are discussing it and

I don't have my copy here, why don't we make a copy of that and make that Deposition Exhibit No. 15. I just think it would be easier to make the record clear that is what you are correcting and I wasn't prepared to question you about it, but just to make sure we don't have an unclear record.

[Sibbison Deposition Exhibit No. 15 was marked for identification.]

EXAMINATION BY MS. COMSTOCK

Question. Do you know whether the Justice Department—

Mr. ELLIOTT. One moment. So the record is clear in response to the previous question, what she testified to was that a copy of—an actual copy of what got sent early was apparently not kept in the office because it is no longer in the files.

The WITNESS. Right.

EXAMINATION BY MS. COMSTOCK:

Question. So this was the second copy you sent with the first one, it is your representation the first one was identical?

Answer. Yes.

Question. You were just sending it to say the date was wrong?

Answer. The first one was identical, except I assume it had a July 13th date on it. And I called the tribe and said this was not supposed to be sent, you know, please destroy it, you will be getting a second letter tomorrow. And that is what that is. And I wouldn't have kept it because the official letter is the letter, the July 14 letter. The one that was inadvertently sent, wasn't supposed to be sent, so I didn't keep it.

Question. Okay. I think we addressed this before, but do you know of any other documents at the Interior Department regarding this matter that have not yet been produced to this committee or to the Justice Department?

Answer. No, ma'am.

Question. That is all I have right now.

EXAMINATION BY MR. SADKIN:

Question. Ms. Sibbison, on behalf of the Minority members of the committee, I would like to thank you for being here today. I understand you are battling a cold and you also had to battle the icy weather to get here and we appreciate you coming here to try to clear up some of these questions. And I just have a few questions. So I could guarantee, from the Minority side, you will be out of here by 5:00 o'clock, per Mr. Elliott's request.

You became involved in the Hudson matter because it was an important decision for the Department of Interior, is that correct?

Answer. Yes.

Question. And it was important because it was about an off-reservation site that was opposed by the community?

Answer. Yes.

Question. So, for instance, if the Sokaogan Chippewa tribe were located next to the City of Hudson instead of 188 miles away, the department might have given less weight to the impact on the St. Croix's existing gaming facility?

Answer. That is correct.

Question. And also maybe less weight to the opposition of the community?

Answer. If they are part of the community themselves, yes.

Question. If they were part of the town?

Answer. Yes.

Question. Is there any reason why the three applicant tribes could not have chosen another location for the application, could have given them maybe the same economic benefits but without community opposition?

Answer. The only reason they couldn't do that, in my personal opinion, is because the engine driving this machine was the dog track owner and the dog track owner was in Hudson. The three tribes could have abandoned the dog track owner and gone somewhere where there was local support and the outcome would probably have been quite different.

Question. Was it your view at the time you considered the Hudson application that the decision would be important for the future of Indian gaming?

Answer. Yes.

Question. And would it be correct to say a decision made over the objections of the surrounding community would put IGRA, the Indian Gaming Regulatory Act, at risk of repeal or amendment?

Answer. Yes.

Question. And that can make it harder or maybe even impossible for other Indian applications to use trust land for gaming purposes?

Answer. Correct.

Question. So was that a policy consideration that influenced the department's reading of applicable statutes and regulations in this case?

Answer. Yes, it was.

Question. Is it your experience that local area BIA offices support most, if not all, tribal applications that are forwarded to Washington? Do you know if area offices—

Answer. I am not an expert in this area; however, there would be no reason for a local area office to forward an application that was negative.

Question. But it is actually the central office, the Washington office, that has to agree with those recommendations, has to actually approve the application?

Answer. Correct.

Question. So if an application were to be denied, it wouldn't be unusual for the Washington office to deny the application, even if it was supported by the area BIA office?

Answer. Correct. Otherwise the Washington office would simply be rubber stamping everything the area office sent in, which would defeat the policy purpose of having central office review it.

Question. And was this decision making process actually subsequent to a directive by Secretary Lujan in the Bush administration?

Answer. That is correct.

Question. To your knowledge, did—the discussions and disagreements within the Indian Gaming Management Staff center are the reasons for denying the application and—

Answer. That is correct.

Question. So is it correct to say to the best of your knowledge the career staff concurred in the final decision to reject the application?

Answer. Absolutely.

Question. And the final decision was actually made by Michael Anderson, Assistant Deputy Director for Indian Gaming Affairs—or Indian Affairs?

Answer. Correct.

Question. Did anyone in the Secretary's—

Mr. ELLIOTT. His title is Deputy Assistant Director.

The WITNESS. He is Deputy Assistant Secretary.

Mr. SADKIN. Thank you.

EXAMINATION BY MR. SADKIN:

Question. And did anyone from the Secretary's Office tell Mr. Anderson what the final decision should be?

Answer. Did they dictate the final decision?

Question. Right?

Answer. No.

Question. Do you believe anyone pressured him to reach the result he reached?

Answer. No.

Question. You testified earlier about a conversation or two you had with Jennifer O'Connor at the White House. Is it your recollection that she was merely making a status inquiry into the application?

Answer. That was my understanding, yes.

Question. And it wasn't that the White House was giving its opinion on the application?

Answer. Correct.

Question. Or dictating an outcome?

Answer. She expressed no opinion as to the outcome or made no requests regarding the outcome.

Question. Did the White House dictate a date the decision had to be made by?

Answer. Absolutely not. The date had absolutely nothing to do with the White House.

Question. Do you recall telling anyone else at the Interior Department about your conversation with Ms. O'Connor?

Answer. I have no independent recollection of it. When I reviewed the documents, however, I think I forwarded a copy of the Minnesota delegation letter that went to Ickes to Skibine so that they would have it as part of their substantive—when a Congressman makes substantive comments, I do send them down to the gaming office, which I had forgotten, so that they will have them on record.

Question. But it was not your intention to give Mr. Skibine instructions about the outcome of his analysis?

Answer. No, and I don't see how forwarding the delegation letter could have done that.

Question. Are you aware of any involvement by Secretary Babbitt on this issue?

Answer. No. I believe he was on a trip to Wisconsin for some other purpose and people asked him about it, but I think he answered off the top of his head. I don't think he had even been briefed on it.

Question. So he never discussed the Hudson matter with you?

Answer. No.

Question. Was there any political interference of any kind involved in the decision making process within the Department of Interior?

Answer. With great respect, I believe Congressmen were trying very hard to influence the decision. I don't believe that in fact there was any influence, outside of the merits of the decision, outside of the merits of the factual record, is what we based the decision on. The only elected officials or governmental officials that really had an influence on the decision were local elected officials and Congressman Gunderson, because he was the local Representative.

Question. But the White House didn't try to influence the decision in any way?

Answer. No.

Question. Did the DNC try to influence the decision in any way?

Answer. No.

Question. Were you ever contacted by the Clinton/Gore Campaign about Hudson?

Answer. No.

Question. Would you agree that the Hudson casino decision was rendered on the merits based on the recommendations of the career BIA staff?

Answer. Absolutely.

Question. And do you agree with the decision?

Answer. Absolutely.

Question. I have no other questions, thank you.

Ms. COMSTOCK. Thank you for appearing today. We did get you out of here before 5:00.

The WITNESS. Thank you.

Mr. ELLIOTT. Before we go off the record, Ms. Comstock, I would like to know whether it is the intention of the staff or the committee, as far as you know, to release our privileged documents, or, in the alternative, to honor the privilege and protect the interests that we have in the litigation. We can get, if you wish, as you asked me, a letter asserting the privilege for our documents, but having made the request before that they not be released, I would like an answer, which we have not gotten, as to whether the committee intends to release these documents.

Ms. COMSTOCK. Actually, as I indicated earlier, we are not in a position to represent what the committee is going to do, and this is all preserved for the committee, but I will go ahead and make this Deposition Exhibit No. 16, which is the letter that we received when we sent over the documents, and no privileges were asserted. I think the letter speaks for itself, and we will just put that up and I think we can take the matter up with the full committee.

[Sibbison Deposition Exhibit No. 16 was marked for identification.]

Mr. ELLIOTT. That is the January 12 letter.

Ms. COMSTOCK. Yes.

Mr. ELLIOTT. Which by itself is labeled privileged, the document.

Ms. COMSTOCK. I think the letter will speak for itself, and we can discuss this further after if you would like to.

[Whereupon, at 5:00 p.m., the deposition was concluded.]

[The exhibits referred to follow:]

*Heather - As per my e-mail
on Sokaogon*
MAR 27 1995 *Scott Keep*

Honorable Arlyn Ackley Sr.
Chairman
Sokaogon Chippewa Community, Inc.
Rt. 1, Box 625
Crandon, Wisconsin 54520

file - Hudson dayback

Dear Chairman Ackley:

As you may know, on February 8, 1995, I met with Senator Paul Wellstone, Representatives Jim Oberstar, David Minge, Bill Luther, Bruce Vento and tribal representatives from the Mille Lacs, Bois Forte, Leech Lake, Shakopee Mdewakanton Sioux, Red Lake and St. Croix Tribes, to discuss their concerns with your application to place land located in Hudson, Wisconsin, in trust for the Sokaogon Chippewa Community, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the Red Cliff Band of Lake Superior Chippewa Indians for gaming purposes.

At this meeting, tribal representatives indicated that they did not believe the Bureau of Indian Affairs (BIA) had complied with the tribal consultation requirements of Section 20 of the Indian Gaming Regulatory Act, and that they lacked sufficient information to adequately respond to your proposed acquisition. They specifically requested that they be granted additional time to submit reports detailing the impact of the proposed acquisition on nearby tribes. We agreed to this request, but did not set a deadline for the submission of this information. In order not to unduly delay consideration of this proposed acquisition, we have advised the parties with whom we met on February 8 that any additional information must be submitted by April 30, 1995, in order to be considered by the Department of the Interior in making the Section 20 determination.

Please be assured that our commitment regarding the submission of additional information will not delay consideration of other aspects of your application by the BIA's Indian Gaming Management Staff. Should areas of concern with the application be identified, you will be so notified.

Sincerely,

15/ John J. Duffy

John J. Duffy
Counselor to the Secretary

bcc: Secy Surname, Secy RF(2), 101-A, Bureau RF, Surname, Chron, Hold
BIA:GSKibine:trw:3/16/95 wp:a:ackley.dog
corr per JDuffy:trw:3/27/95



Identical letters sent to: *gaishkibos, Lac Courte Oreilles Band of Chippewa
Rose Gurnoe, Red Cliff Band of Lake Superior Chippewas*

FAX: [REDACTED]

[illegible]

027P?

Market and Economic Impact Analysis -
Impact of the Proposed Hudson
Casino on the St. Croix Casino & Hotel

Presented to:
St. Croix Band of Chippewa



Presented by:
COOPERS & LYBRAND LLP
Economic Consulting Services

April 27, 1995

Coopers
& Lybrand

02809



Peat Marwick LLP

4200 Northwest Center
90 South Seventh Street
Minneapolis, MN 55402

Telephone [REDACTED]

Teletax 612 341 0202

April 28, 1995

Mr. George Skibine
Director
Office of Indian Gaming
Room 2070 Main Interior Building
1849 C Street, North West
Washington, D.C. 20240

Dear Mr. Skibine:

I have been asked to transmit the enclosed report directly to your attention. This report constitutes part of the official comments in opposition to the Hudson, Wisconsin gaming proposal from the:

- Minnesota Indian Gaming Association
- Mille Lacs Band of Chippewa Indians
- St. Croix Chippewa Band
- Shakopee Mdewakanton Dakota Tribe

Please acknowledge receipt by return voice mail at 612-337-9494 or fax 612-337-9464.

Very truly yours,

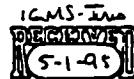
KPMG Peat Marwick LLP

Steven W. Laible
Partner

SWL:lg

cc. Senator Paul Wellstone
Mr. Stanley Crooks
Ms. Marge Anderson
Mr. Lewis Taylor
Mr. John McCarthy
Mr. Larry Kimo

02345



Member Firm of
KPMG Peat Marwick LLP



United States Attorney's Office
Western District of Wisconsin

February 14, 1996

Attorney/Client
Communication

MEMORANDUM FOR SCOTT KEEP, OFFICE OF THE SOLICITOR

From: David E. Jones, AUSA

Subject: Analysis of Litigation Risks in Sokaogon, et al. v. Babbitt, et al.

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Privileged

This responds to your request that litigation counsel provide a brief analysis of the litigation risks in Sokaogon, et al. v. Babbitt, et al., No. 95-C-659-C.

1. Substantial Potential for Burdensome Extra-Record Discovery.

In our February 2 hearing on the discovery motions, Judge Crabb's questioning indicated strongly that she would deny our request to limit discovery to the administrative record. She stated outright that "if this were a non-APA case, plaintiffs would easily have demonstrated a reasonable basis for the discovery they seek here" and she asked "What's a plaintiff to do when there is some evidence that outside influences may have affected an agency's decision." She also appeared to believe that the White House, through Harold Ickes's office, exerted influence over the Department, an allegation that plaintiffs pressed by observing that Secretary Babbitt did not provide an affidavit denying his alleged statement that Ickes had ordered the Department to deny the application on July 14, 1995.

A decision allowing extra-record discovery is therefore highly probable, and such a decision would create a difficult precedent affecting not only the Department but also every controversial agency decision. We can expect that the following individuals will be deposed: John Duffy, George Skibine, Michael Anderson, Heather Sibbison, Donald Fowler of the DNC, and perhaps Harold Ickes and Secretary Babbitt. (Note: Ickes has not been noticed by plaintiffs to date and Babbitt's initial notice of deposition has been withdrawn by plaintiffs.) We can also expect burdensome document requests and interrogatories, such as requests for a list of all persons who contacted the Department during the review of the plaintiff tribes' application.

2. Section 465 Defense Will Not Prevent Remand.

We do not believe that a defense based on 25 U.S.C. § 465 will prevent the Court from ordering a remand to remedy alleged defects in the § 2719 process. At most, a § 465 defense precludes the Court from ordering the Department to take the land into trust. But this defense will not constrain the Court from ordering a remand if it finds that the Department did not satisfy the consultation requirements imposed by § 2719, particularly given the factual circumstances of this case.

We understand the Department's view that it first reviews an application under § 465 before engaging in the § 2719 analysis, but the record in this case shows that the sequence was reversed: the Department received the Area Office's § 2719 recommendation, and began its review of same, in November 1994, while the

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to Congressional subpoena

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Department did not receive the § 465 package from the Area Office until April 1995. Opposing counsel have pointed out this timing, and the Department's final decision letter of July 1995 can also be read as indicating that the § 2719 process occurred before the Department broadened its range of considerations under § 465.

The consequence of our factual posture is that the Court could reasonably remand this case with an order that the Department reconsider, as a threshold matter, its § 2719 analysis. Such an order would inhibit the Department's ability to dispose of future applications on § 465 grounds without reaching the § 2719 factors, as future litigants could point to a precedent establishing specific, threshold consultation requirements in these types of decisions.

3. Alleged Defects in the § 2719 Process Are Problematic.

Now that we have reviewed the administrative record in greater depth, we have determined that the alleged problems with the § 2719 process are significant. We are primarily concerned about our ability to show that plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome-determinative. Area Directors are told to give applicants an opportunity to cure problems, and it will be hard to argue persuasively that applicants lose this opportunity once the Central Office begins its review. The administrative record, as far as we can tell, contains no record of Department meetings or communications with the applicant tribes in which the Department's concerns were expressed to plaintiffs. These communications may have occurred, but they simply are not documented in the record. The second, and related, problem is that the Department appears to have changed in this case its past policy of requiring "hard" evidence of detriment to the community. The plaintiffs will therefore argue that they had no notice, either through past policy or through direct Departmental communication, that the "soft" concerns expressed by local officials would jeopardize their application. Finally, the record shows that there was no consultation with the State, in contravention of § 2719.

In sum, the Court could take these problems and reasonably conclude that the Department should reconsider the application and provide the plaintiffs with "meaningful" consultation. The risk, of course, is that the Court could also specify what it means by "consultation," throwing further impediments in the Department's future review of these types of applications. These risks would be avoided through a voluntary reconsideration, which plaintiffs could obtain anyway with a new application.

4. Settlement Preserves Department's Flexibility in Defining Scope of § 465.

Finally, we understand that the Department is examining how it should exercise its § 465 discretion in light of the Eighth Circuit's recent decision. To have a chance of winning this case, litigation counsel will need to argue aggressively that the Department has extremely broad discretion, both substantively and procedurally, when it considers an application under § 465. This litigation position may not, as we explained above, be dispositive of all the issues before the Court. At the same time, this position may be inconsistent with wider Departmental goals. It may therefore

increase the Department's policy flexibility if this case were eliminated as an influence.

As you know, we need to move quickly on this opportunity for settlement before the Court reaches a decision on the discovery motions. Please advise us if you need any additional information.

Document
to Court
for
discovery
motions
subpoena

Privileged



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



JUL 14 1995

Honorable Rose M. Gurnoe
Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Dayfield, Wisconsin 54814



Honorable Alfred Trepania
Tribal Chairperson
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Honorable Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520

Dear Ms. Gurnoe and Messrs. Trepania and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes. Following receipt of this recommendation and at the request of nearby Indian tribes, the Secretary extended the period for the submission of comments concerning the impact of this proposed trust acquisition to April 30, 1995.

The property, located in a commercial area in the southeast corner of the City of Hudson, Wisconsin, is approximately 85 miles from the boundaries of the Lac Courte Oreilles Reservation, 165 miles from the boundaries of the Red Cliff Reservation, and 188 miles from the boundaries of the Sokaogon Reservation. The St. Croix Band of Chippewa Indians, one of the eight Wisconsin tribes (not including the three applicant tribes), is located on a reservation within the 50-mile radius used by the Minneapolis Area Director to determine which tribes can be considered "nearby" Indian tribes within the meaning of Section 20 of the Indian Gaming Regulatory Act (IGRA).

Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community.

The decision to place land in trust status is committed to the sound discretion of the Secretary of the Interior. Each case is reviewed and decided on the unique or particular circumstances of the applicant tribe.

For the following reasons, we regret we are unable to concur with the Minneapolis Area Director's recommendation and cannot make a finding that the proposed gaming establishment would not be detrimental to the surrounding community.

The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to this trust acquisition for gaming purposes. In addition, in a March 28, 1995, letter, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District in whose district the St. Croix Meadows Greyhound Track is located, have expressed strong opposition to the proposed acquisition. The communities' and State officials' objections are based on a variety of factors, including increased expenses due to potential growth in traffic congestion and adverse effect on the communities' future residential, industrial and commercial development plans. Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

In addition, the record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin. Their opposition is based on the potential harmful effect of the acquisition on their gaming establishments. The record indicates that the St. Croix Casino in Turtle Lake, which is located within a 50-mile radius of the proposed trust acquisition, would be impacted. And, while competition alone would generally not be enough to conclude that any acquisition would be detrimental, it is a significant factor in this particular case. The Tribes' reservations are located approximately 85, 165, and 188 miles respectively from the proposed acquisition. Rather than seek acquisition of land closer to their own reservations, the Tribes chose to "migrate" to a location in close proximity to another tribe's market area and casino. Without question, St. Croix will suffer a loss of market share and revenues. Thus, we believe the proposed acquisition would be detrimental to the St. Croix Tribe within the meaning of Section 20(b)(1)(A) of the IGRA.

We have also received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway and the potential harmful impact of a casino located one-half mile from the Riverway. We are concerned that the potential impact of the proposed casino on the Riverway was not adequately addressed in environmental documents submitted in connection with the application.

Finally, even if the factors discussed above were insufficient to support our determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors, including the opposition of the local communities, state elected officials and nearby Indian tribes, to decline to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465, to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes. This decision is final for the Department.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Anderson".

Michael J. Anderson
Deputy Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
National Indian Gaming Commission

02955

DRAFT: 6/29/95
a:\Hudson.ltr

Rose M. Gurnoe, Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Gaiashkibos, Tribal Chairperson
Lac Courte Oreilles Band of
Lake Superior Chippewa Indians
Route 2, Box 2700
Maynard, Wisconsin 54843



Arlyn Ackley, Sr., Tribal Chairman
Sokaegon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520

Dear Ms Gurnoe and Messrs. Gaiashkibos and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaegon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55 acres parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes.

For the following reasons, the Secretary has determined not to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. 465, to acquire title to this 55 acres parcel of land in trust for the Tribes.

Land not held in trust or restricted status may only be acquired for an Indian tribe in trust status when such acquisition is authorized by an act of Congress. Authority to acquire the parcel in question is found in Section 5 of the IRA, which, in pertinent part, provides as follows:

The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations,

including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land to Indians.

Title to any lands or rights acquired pursuant to [this section] shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

The statute states that the decision to acquire land is one within the Secretary's discretion. 25 CFR Section 151.10 sets forth factors to be considered when the Secretary is acting on a request for acquisition of land in trust status, although the regulation does not purport to constrain the Secretary's discretion to consider other factors, nor to assign different weight to each factor.

One of the factors listed is the purpose for which the land will be used. The purpose of the acquisition is to enhance class III gaming at the facility with the introduction of slot machines and blackjack along with the pari-mutuel dog racing currently being conducted on the site by the owners of St. Croix Meadows Greyhound Park, Croixland Properties. For the following reasons, We are not prepared to take this off-reservation parcel into trust for gaming purposes at this time.

The parcel of land is located off-reservation, in Hudson, Wisconsin. The record before us indicates that the surrounding communities have strongly objected to this proposed trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to the proposed trust acquisition for gaming purposes. The communities' objections are based on a variety of factors, including the following: 1) Increased law enforcement expenses due to potential exponential growth in crime and traffic congestion; 2) testing waste water treatment facilities up to remaining operating capacity; 3) problems with solid waste; 4) adverse effect on the communities' future residential, industrial and commercial development plans; and 5) difficulties for current Hudson businesses to find and retain employees.

The record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin and the Shakopee Mdewakanton Sioux Community, as well as by a substantial number of other Indian tribes both in Wisconsin and in the neighboring State of Minnesota. Their opposition is centered on the potential harmful effect of this acquisition on their gaming establishments.

In addition, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District, and the U.S.

Representative in whose district St. Croix Meadows Greyhound Track is located have expressed strong opposition to the proposed acquisition.

Finally, we have received numerous complaints from individuals because of the proximity of the proposed class III gaming establishment to the St. Croix National Scenic Riverway, and the potential harmful impact of a casino located one-half mile from the Riverway.

For these reasons, the Secretary has determined not to exercise his discretionary authority to acquire this off-reservation parcel of land in trust for the Tribes for gaming purposes.

As you know, Section 20 of the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. In this particular case, because we have determined not to exercise our discretionary authority to acquire this parcel of land pursuant to Section 5 of the IRA and regulations in 25 CFR Part 151, we need not undertake the two-part determination of Section 20 of IGRA, an additional requirement imposed on the Secretary before gaming can occur on Indian lands acquired after the date of enactment of IGRA. This decision is final for the Department.

Sincerely,

Ada E. Deer
Assistant Secretary - Indian Affairs

[OR, IF FOR DEPUTY COMMISSIONER'S SIGNATURE, INCLUDE FOLLOWING STATEMENT, AND DELETE LAST SENTENCE ABOVE]:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board must certify that you have sent copies to these parties. If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal. If

you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal procedures.

If no appeal is timely filed, this decision will become final for the Department at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

Deputy Commissioner for Indian Affairs

cc: Area Director, Minneapolis Area Office
Chairman, National Indian Gaming Commission

UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS
1000 E. WASHINGTON AVENUE, 10TH FLOOR
WASHINGTON, D.C. 20001
TELEPHONE (202) 512-2000
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STEFAN W. HEALY
EXECUTIVE DIRECTOR
PATRICIA M. JILL
MANAGING DIRECTOR

United States Senate
COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450



July 19, 1996

The Honorable Bruce Babbitt
Secretary
Department of the Interior
18th & C Streets, N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

I was profoundly disturbed to read in last Friday's *Wall Street Journal* that top White House officials actively intervened last year to reverse a preliminary Interior Department decision to resolve a dispute between Indian tribes. Ordinarily, I would be heartened by White House interest in Indian affairs. But the evidence cited by the *Journal* indicates that one group of tribes obtained White House attention and support primarily because they gave more campaign contributions to the Democratic National Committee (DNC) than did a competing group of tribes. The following events reported in the *Journal* are troubling to me and, at a minimum, contribute to an appearance of impropriety:

- In early 1995, several Indian tribes hired Patrick O'Connor, a major fundraiser for the Democratic Party and former Treasurer of the DNC, in an effort to reverse a preliminary decision of the Interior Department -- the agency charged by law to resolve such matters -- that favored one group of tribes over another group of tribes seeking to acquire a racetrack.
- On April 24, 1995, O'Connor talked to the President and his senior adviser, Bruce Lindsey, in person at a Democratic Party fundraising event about the problem his tribal clients had with the preliminary Interior Department decision.
- Between April 24 and 26, 1995, Harold Ickes, deputy chief of staff to the President, placed at least two calls to O'Connor about this same issue.
- On April 25, 1995, the director of the Minnesota Indian Gaming Association wrote other tribal leaders to inform them about an upcoming meeting on this issue with the DNC Co-Chairman, Donald Fowler, saying that "the people we will be meeting with are very close to President Clinton and can get the job done."

- The April 25, 1995 memorandum said the meeting would be with Fowler, accompanied by "top level staff" representing Senator Bob Kerrey, who serves as Chairman of the Democratic Senatorial Campaign Committee, and Senator Tom Daschle, who is of course the Democratic Leader in the Senate.
- On April 28, 1995, O'Connor took his tribal clients to see Fowler at the DNC headquarters to talk about this issue.
- Sometime between April 28 and May 8, 1995, Fowler sent Ickes a memo supporting the position taken by O'Connor.
- On May 8, 1995, O'Connor wrote Ickes about reversing the preliminary Interior Department decision, stating "I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee."
- Fowler has admitted that he "had a conversation with" Ickes on this same issue sometime after the April 28, 1995 meeting, a conversation an Ickes spokesman has said Ickes cannot recall.
- An Ickes aide, Jennifer O'Connor, placed what the Ickes spokesman called routine status calls to Interior officials on the issue after the April 28, 1995 meeting.
- Paul Eckstein, the lobbyist for Indian tribes on the other side of the dispute, has sworn that on July 14, 1995 he met with you, Mr. Secretary, to seek a delay of the decision in favor of O'Connor's client tribes.
- Eckstein has sworn that on July 14, 1995 you told him that Ickes had called you and told you the decision had to be issued that day without delay. It was.

The appearance of impropriety raised in this article is quite obvious -- high-level White House attention goes to where the money is, reversing an Interior resolution of a dispute between Indian tribes in favor of the tribes who have given the most money to the Democratic National Committee.

I firmly believe Indian affairs policy decisions of the Interior Department should be made in strict isolation of how much money any of the tribes have contributed for partisan campaign purposes. From our years of working together on these and many issues, Mr. Secretary, I am certain you share my firm belief in this regard.

As Chairman of the Senate Committee on Indian Affairs, I would appreciate it very much if you would provide me with your response to several questions related to the story set out in the *Journal* article.

On or about July 14, 1995 was a telephone call made by Ickes or by someone on his behalf to you or someone on your behalf on this issue?

If so, did Ickes or his delegate convey to you a message that the Interior Department should not delay release of its decision to favor O'Connor's client tribes on this matter?

Paul Eckstein, the lobbyist for Indian tribes on the other side of the dispute, has sworn in an affidavit that he met with you on July 14, 1995 and that you told Eckstein that Ickes had called you and told you the decision in favor of Mr. O'Connor's client tribes had to be issued that day without delay? Is this true?

I have never before been aware of such active involvement by high-level White House staff on resolving disputes between competing Indian tribes. Would you please describe any other occasions during your tenure as Secretary of the Interior when top-level White House staff have personally intervened in Interior Department policy or administrative decisions directly affecting Indian tribes?

Likewise, I have never before been aware of such active involvement by high-level officials of the Democratic National Committee to intercede with the White House to broker a dispute between Indian tribes. Would you please describe any other occasions when Mr. Fowler or other high-level DNC officials have personally intervened with the White House or the Interior Department on policy or administrative decisions directly affecting Indian tribes?

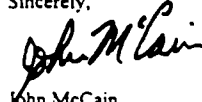
Both Senator Inouye and I, as we have exchanged the positions of Chairman and Vice Chairman of the Senate Committee on Indian Affairs over the years, have always tried our utmost to ensure that our deliberations on Indian affairs policy be conducted in a fully non-partisan manner. It has been my view that matters directly affecting Indian tribes should be resolved not necessarily according to the Republican or Democratic philosophies prevailing at any given moment but instead according to fundamental principles of tribal self-determination and fairness that honor the government-to-government and trust relationships the United States has with Indian tribes.

After reviewing the activities recited in the *Journal* article, one could reasonably conclude that, in this instance, what influenced the Administration's determinations regarding Federal-Indian matters were campaign contributions rather than the long-standing fundamental principles that have guided Federal-Indian policy in recent decades. I know these are strong words, but can you tell me why it would not be reasonable for Indian tribes to conclude from the events described in the *Journal* article that they must give more money to Democrats than do their competitors if they are to gain White House attention and reversal of preliminary Interior decisions that would adversely affect them? Surely you would agree with me that White House attention should not be the subject of a bidding war among

campaign donors. To the extent it is, American Indian people, and indeed, all Americans, lose.

I ask that you respond to the questions I have raised and provide me with some assurance that, from this point forward, you will personally ensure that campaign contributions made by Indian tribes, or the failure of an Indian tribe to make contributions, will have absolutely no impact on Interior Department policy decisions affecting American Indians and Alaska Natives. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John McCain", written over a horizontal line.

John McCain
Chairman



THE SECRETARY OF THE INTERIOR
WASHINGTON

AUG 30 1996

Honorable John McCain
United States Senate
Washington, D.C. 20510-0303

Dear Senator McCain:

I apologize for the delay in responding to your letters of July 19 and 25, 1996, concerning allegations made in a July 12, 1996 Wall Street Journal article. This article falsely insinuated that this Department has allowed campaign contributions to dictate Indian policy.

I am enclosing two memoranda that answer most of the questions you ask. The first describes the background of the matter in question, and the contacts made by officials in the Executive Office of the President on that matter. It was prepared by Heather Bibbison, assistant to Counselor John Duffy (who, as you know, recently returned to private law practice). The second is a memorandum from the Solicitor discussing the court decision addressed in your July 25 letter.

Your letter also inquired about communications directly involving me. I have no recollection of being contacted by attorney Patrick O'Connor on this matter, nor do I recall ever being informed by anyone in the Executive Office of the President of Mr. O'Connor's involvement. Further, like members of my staff, I did not learn of the April 25, 1996 letter from the Director of the Minnesota Indian Gaming Commission until well after the decision on the trust land application was made, and I had no knowledge of any meetings, memoranda, telephone calls or any other communications between Executive Office persons and tribal representatives opposed to the acquisition discussed in your July 19 letter.

I met with Mr. Paul Eckstein, an attorney for the three tribes applying for the trust land acquisition, shortly before a decision was made on the application. Following this conversation, I instructed my staff to give Mr. Eckstein the opportunity to discuss the matter with John Duffy. I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay. I never discussed the matter with Mr. Ickes; he never gave me any instructions as to what this Department's decision should be, nor when it should be made.

To the best of my recollection I have never been contacted by "top-level White House staff" on any Interior Department decision directly affecting Indian tribes nor, to the best of my recollection, have I ever been contacted by any official from the Democratic National Committee trying to influence the Department's decisionmaking process on such decisions.

Like you, I believe that this Department should make decisions like this one wholly on the merits, without any regard to campaign contributions or other partisan political considerations. We did just that in this matter.

Over the years, you and I have worked together on a wide variety of issues affecting Native Americans, with what I believe has been a shared determination to do our best to discharge our trust obligations in a nonpartisan manner. I regret that, relying solely on a newspaper article, you have chosen to so publicly call into question the integrity of our decisionmaking on this matter. I am pleased to have the opportunity to set the record straight.

Sincerely,

A handwritten signature in black ink, appearing to read "R. B. Hall", written in a cursive, stylized script.

Enclosures

THE HONORABLE BRUCE
 BABBITT
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 TEL: (202) 245-7000
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STEVEN J. HEELEY
 WASHINGTON STAFF DIRECTOR/CHIEF COUNSEL
 1800 M STREET, N.W.
 WASHINGTON, D.C. 20540

United States Senate
 COMMITTEE ON INDIAN AFFAIRS
 WASHINGTON, DC 20510-8450



July 25, 1996

The Honorable Bruce Babbitt
 Secretary
 Department of the Interior
 18th & C Streets, N.W.
 Washington, D.C. 20240

Dear Mr. Secretary:

On July 19th I wrote you about the allegations in the *Wall Street Journal* story that partisan campaign contributions influenced the outcome of a preliminary Interior Department decision resolving a dispute between Indian tribes. In the July 20 issue of the *Washington Post*, an unidentified "spokeswoman" for the Interior Department said a federal judge recently found no relationship between the campaign contributions and Interior's handling of the matter, stating that Interior feels "vindicated by the courts."

I have reviewed the June 11, 1996 court order to which your spokeswoman referred. It denies the partial summary judgment sought by the three Indian tribes who allege that the Interior Department decision adverse to them was influenced by the campaign contributions of other tribes. It grants the motions of the United States for a protective order to limit discovery, to limit judicial review of the administrative record, to strike a portion of the administrative record, and for summary judgment that the Deputy Assistant Secretary - Indian Affairs had the legally-delegated authority to deny such an application, and that the Counselor to the Secretary had legal authority to reopen the consultation period under the Indian Gaming Regulatory Act.

As you know, summary judgment is a means by which a court and the parties may, early in a case, dispose of issues about which there is no real factual dispute. This is designed to avoid the necessity for a trial on issues which can be resolved by the judge as a matter of law.

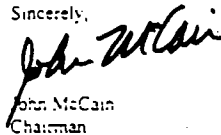
As you can see from the attached order, at page 14, the Court stated that: "Given the parties' divergent views, it is difficult to determine where reality lies. At this point it is not necessary to determine the truth of the matter but only to decide whether the undisputed facts provide enough evidence of potential political impropriety to warrant extra-record discovery and judicial review." The Court merely said that the facts to which all parties agree do not

justify the "exceptional" relief of extra-record discovery and judicial review. The allegations raised in the *Wall Street Journal* article remain in substantial factual dispute and are not resolved by the Court's order of June 11, 1996. Although the record that can be considered by the Court is now limited by the June 11, 1996 order, I believe the matter remains subject to appellate review. In any event, the allegations themselves have yet to be tried by any Court and they remain of continuing interest to me and the Committee on Indian Affairs.

I would appreciate you informing me on what basis the Department has concluded it has been "vindicated" by the Court's June 11, 1996 order? Such a conclusion appears to me to be, at best, premature. If upon your review of the order you agree that it does not "vindicate" the Department on the disputed allegations of the influence of campaign contributions, I think it would be only fair for the Department to set the record straight and inform the news media that the Department has retracted its earlier statement of vindication.

Mr. Secretary, I have always appreciated the fine job you have done as Secretary in the efforts to improve our Nation's relations with the Indian tribes. I know this is due to your deep personal commitment to Native Americans. I also know you set high standards for yourself and for the Department on matters of ethics and fairness. That is why I would hope you agree with me that even if the courts eventually conclude that the decision of the Department was not influenced by campaign contributions, the fact remains that there is an unseemly appearance of impropriety that is produced when top-level Democratic National Committee and White House officials actively attempt to influence public policy decisions in favor of certain Indian tribes while at the same time mentioning these tribes' previous campaign contributions to the Democratic Party.

Sincerely,



John McCain
Chairman



THE SECRETARY OF THE INTERIOR
WASHINGTON

AUG 30 1996



Honorable John McCain
United States Senate
Washington, D.C. 20510-0303

Dear Senator McCain:

I apologize for the delay in responding to your letters of July 19 and 25, 1996, concerning allegations made in a July 12, 1996 Wall Street Journal article. This article falsely insinuated that this Department has allowed campaign contributions to dictate Indian policy.

I am enclosing two memoranda that answer most of the questions you ask. The first describes the background of the matter in question, and the contacts made by officials in the Executive Office of the President on that matter. It was prepared by Heather Sibbison, assistant to Counselor John Duffy (who, as you know, recently returned to private law practice). The second is a memorandum from the Solicitor discussing the court decision addressed in your July 25 letter.

Your letter also inquired about communications directly involving me. I have no recollection of being contacted by attorney Patrick O'Connor on this matter, nor do I recall ever being informed by anyone in the Executive Office of the President of Mr. O'Connor's involvement. Further, like members of my staff, I did not learn of the April 28, 1996 letter from the Director of the Minnesota Indian Gaming Commission until well after the decision on the trust land application was made, and I had no knowledge of any meetings, memoranda, telephone calls or any other communications between Executive Office persons and tribal representatives opposed to the acquisition discussed in your July 19 letter.

I met with Mr. Paul Eckstein, an attorney for the three tribes applying for the trust land acquisition, shortly before a decision was made on the application. Following this conversation, I instructed my staff to give Mr. Eckstein the opportunity to discuss the matter with John Duffy. I must regrettably dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay. I never discussed the matter with Mr. Ickes; he never gave me any instructions as to what this Department's decision should be, nor when it should be made.

To the best of my recollection I have never been contacted by "top-level White House staff" on any Interior Department decision directly affecting Indian tribes nor, to the best of my recollection, have I ever been contacted by any official from the Democratic National Committee trying to influence the Department's decisionmaking process on such decisions.

Like you, I believe that this Department should make decisions like this one wholly on the merits, without any regard to campaign contributions or other partisan political considerations. We did just that in this matter.

Over the years, you and I have worked together on a wide variety of issues affecting Native Americans, with what I believe has been a shared determination to do our best to discharge our trust obligations in a nonpartisan manner. I regret that, relying solely on a newspaper article, you have chosen to so publicly call into question the integrity of our decisionmaking on this matter. I am pleased to have the opportunity to set the record straight.

Sincerely,



Enclosures



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240
August 29, 1996

Memorandum

To: Secretary *[Signature]*
From: Heather Sibbison, Special Assistant
Subject: Information responding to questions raised by Senator McCain in his July 19 letter.

Background

In November 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) sent to the BIA Central Office (through the Indian Gaming Management Staff) a routine transmittal of an application from three tribes in Wisconsin to take 55 acres of land in Hudson, Wisconsin, into trust for development of a casino. The three tribes are the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin. The primary focus of the application was an existing, failing, dog track (the St. Croix Meadows Greyhound Park).

The parcel is located a considerable distance from the three tribes' reservations: 85 miles from the boundary of the Lac Courte Oreilles reservation, 165 miles from the boundary of the Red Cliff reservation, and 188 miles from the boundary of the Sokaogon reservation.

The record before the Department showed strong opposition by local communities surrounding the dog track parcel to the concept of developing a casino on the property. For example, the Common Council of the City of Hudson adopted a resolution expressing opposition to casino gambling at the dog track, and the nearby Town of Troy adopted a similar resolution objecting to the trust acquisition for gaming purposes. The Department also received a letter signed by a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District (in whose district the dog track is located) expressing strong opposition to casino gaming at the dog track.

An Indian tribe closely situated to the dog track, the St. Croix Tribe of Wisconsin, also was adamantly opposed to the three tribes' application. The St. Croix tribe is within 50 miles of the track, and thus under BIA policy must be consulted on proposals by other tribes to take land into trust for off-reservation gaming. Furthermore, the Minnesota Indian Gaming Commission and all the Minnesota Indian tribes opposed the plan. Senator Wellstone and Representative Steve Gunderson also expressed concern about the proposed casino.

Given all the circumstances, including the strong opposition by

the neighboring tribe and the local communities and the distance of the parcel from the three tribal applicants' reservations, the Department declined to take the 55 acre parcel into trust for the three tribes. The people in the Secretariat who were involved in this were Michael Anderson, Deputy Assistant Secretary for Indian Affairs (who made the decision), myself, Tom Collier, Chief of Staff (before he left the Department at then end of June 1995) and John Duffy, Counselor to the Secretary. Mr. Anderson, Mr. Collier and Mr. Duffy (who left the Department in July 1996) agree with the recollections I set forth here. The four of us are referred to below as "we."

The "Events" Described in the Senator's Letter

The first three bulleted "events" concern involvement by Patrick O'Connor in representing tribal opponents in this matter. Mr. O'Connor and other members of his firm, representing the tribes opposed to taking this land in trust, met with Mr. Collier and me sometime in the early spring of 1995 seeking to ensure that a report from financial consultants would be included in the decisionmaking record. This was, to the best of our recollection, the only meeting any of us had with Mr. O'Connor. The fact that Mr. O'Connor represented the opposing tribes in this matter was not a factor in our decisionmaking.

The fourth "event" concerned a letter dated April 25, 1996, from the Director of the Minnesota Indian Gaming Commission to other tribal leaders. We had not seen nor even heard of this letter until a copy of it was given to the Department by the U.S. Attorney handling the three tribes' suit against the United States. This was well after the decision was made to deny the three tribes' application. It therefore had no impact on the Department's decisionmaking.

Regarding "events" five through nine, we had no knowledge of meetings, memoranda, telephone calls or any other communications between the staff of the Executive Office of the President and persons representing tribes opposed to the acquisition. If any such contacts took place, they had no effect on the Department's decisionmaking.

Regarding the tenth "event," it is accurate that Jennifer O'Connor, an aide to Harold Ickes, contacted me on or about June 26, 1995, regarding the three tribes' application. The purpose of her call was to ask for our assistance in providing information on this matter so that she could prepare a response to a June 12, 1996 letter written to Mr. Ickes by Senator Paul Wellstone and four Minnesota congressional representatives opposing the three tribes' application. She made clear in that call that the Executive Office of the President was not seeking in any way to influence the Department's decision on the matter. I responded to her request by sending her draft replies to the incoming correspondence.

Regarding the eleventh "event," John Duffy did, at the Secretary's request, have a meeting with Paul Eckstein, representing the three tribes who were applying to have the land taken into trust, shortly before the Department's decision denying the application was announced. Mr. Eckstein provided no new information, and shortly afterward the decision denying the application was announced.

Overall Response to the Senator's Inquiry

We have no recollection of being contacted by Harold Ickes or anyone on his staff on or about July 14, 1996, on this issue. The only relevant contact that any of us had was Ms. O'Connor's call to me a couple of weeks earlier, described above. At no time did anyone in the Executive Office of the President convey any message to us regarding what the decision should be on this matter or when it should be made. In short, the insinuation in the Journal article of political and Executive Office of the President interference in the Department's decision in this matter is false.



United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240
August 29, 1996

To: Secretary
From: Solicitor *John Ledy*
Re: Senator McCain's July 25, 1996 letter

The Senator's letter takes issue with the assertion, by a Departmental spokesperson as reported in the July 20 Washington Post, that the Department believes a recent federal district court decision vindicates the Department's decisionmaking process regarding the Wisconsin trust land application. The letter acknowledges that the court dismissed certain claims against the Department, but attempts to diminish the significance of the decision by claiming it did not deal with disputed matters of fact. I do not believe this characterization of the decision is correct.

The court ruling was made in a lawsuit brought by the tribes who had applied to have the U.S. take a parcel of land in Wisconsin located some distance from their reservations into trust so they could operate a casino on the land. Upon the Department's rejection of their application, the tribes sought to overturn that decision in federal court. Sokaccon Chippewa Community, et al. v. Babbitt, No. 95-C-659-C (W.D. Wis.). On June 11, 1996, the district court issued a forty-three page opinion and order on various motions filed by the plaintiffs and the defendants. Most pertinent, the court granted the United States' motion to limit judicial review in this case to the administrative record before the Department.

I believe it can fairly be said that this court decision vindicates our position that there was no improper political intrusion or influence in our decision on this matter. Although the decision was on the seemingly technical question of whether the court should make any inquiry beyond the administrative record, the material the plaintiff wanted to introduce outside that record was exactly the material referred to in the Wall Street Journal article and relied upon in Senator McCain's July 19 letter to you. The court's opinion reviewed that record in some detail (June 11 opinion, pp. 9-12).

Moreover, the court assured, for purposes of deciding the motion, that the allegations that such contacts were made was true. While Senator McCain's July 25 letter points out that the allegations "remain in substantial factual dispute and are not resolved by the Court's order of June 11, 1996," he fails to point out that the reason the allegations are in dispute is because we dispute some of them. Put another way, the court was viewing the material from the point of view most favorable to the plaintiffs' allegation of improper political interference.

Looking at the material in question from the perspective most

favorable to the plaintiffs, the court's conclusion could not have been more clearly stated: "although plaintiffs have shown that congressional and presidential contacts were made with the Department of the Interior, they have not shown that the contacts could be deemed improper." (Opinion, p. 3, emphasis added) Turning to the details, the court found:

"[T]here is surprisingly little evidence of interaction between congressional or presidential officials and Department of the Interior staff, as a recap of the three specific events constituting the actual contact among members of Congress, presidential staff and the department will show."

(Opinion, p. 29.)

Regarding the alleged meetings and letters involving opposition tribes, the Democratic National Committee Chairman, and White House staff, the court said: "The problem with this evidence is that plaintiffs do not link it any way to the Department of the Interior and to the official reviewing plaintiffs' application." (Opinion, p. 31, emphasis added.)

In sum, the court had before it, and treated as true for purposes of ruling on the motion, all of the materials discussed in the Wall Street Journal article. After careful, thorough examination and discussion (the court's opinion on this issue covers more than 30 pages) the court found no basis for the plaintiffs' allegations of bad faith or improper behavior and accordingly denied the plaintiffs' motion for extra-record review.

For that reason, I believe the Departmental spokesperson was fully justified in stating that the court decision vindicated the Department's decisionmaking here.

O'CONNOR & HANNAN, LLP
ATTORNEYS AT LAW



SUITE 800
100 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-1441

May 8, 1995

Mr. Harold Ickes
Deputy Chief of Staff for Policy
and Political Affairs
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Proposal pending at Interior to create trust
lands at the Hudson Dog Track in Hudson,
Wisconsin for an Indian Gaming Casino

Dear Mr. Ickes:

I appreciate your calling me concerning the above subject on Tuesday, April 25, and again on Wednesday, April 26. I assume these calls were prompted by my discussions with the President and Bruce Lindsey on April 24 when they were in Minneapolis. I returned your calls and talked to your assistant, Mr. Summa, who advised that you were not in the office when I called. Since I had an appointment with Don Fowler on Friday, April 28, to discuss this matter, I decided not to try to contact you until after the Fowler meeting with the chairman of five of the many Minnesota and Wisconsin tribes that oppose the creation of the trust lands for gambling purposes and the bailout of the current dog track owners.

I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. Since the Fowler memo was sent to you, the City Council of Hudson, Wisconsin, passed a resolution opposing the construction and operation of a casino at the dog track.

The Secretary of Interior has the discretion to create such trust lands if he finds:

1. it creates an economic benefit for the applicants, and
2. it does not create economic hardship for others.

The Minnesota and Wisconsin tribes who met with Interior officials explained the economic losses they would suffer if another casino were established in this area, due to the close

EOP 064262

HUD FOIA 0001

Mr. Harold Ickes
May 8, 1993
Page 2

proximity of their casinos. In addition, Coopers & Lybrand as well as Peat Marwick recently submitted to Interior a detailed analysis outlining the adverse economic repercussions that would result from this happening.

I am concerned that those at Interior who are involved are leaning toward creating trust lands. We requested a copy of the Arthur Anderson report which the petitioners commissioned which found no adverse financial impact. The copy submitted to us "blocked out" all of the vital information relating to the size of the operation, how many machines, tables, etc., which we need to know, as well as the statistics and reasoning used in determining that the surrounding casinos would not suffer a serious economic impact. We need this data in order to put our best case forward to Interior. We have no objection to Interior's submitting the Coopers & Lybrand or the Peat Marwick reports to the petitioners.

I would also like to relate the politics involved in this situation:

1. Governor Thompson of Wisconsin supports this project.
2. Senator Al D'Amato supports this project because it baits out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York.
3. The chairman of the Indian tribe in the forefront of this project is active in Republican party politics; this year he was an unsuccessful Republican candidate for the Wisconsin State Senate.
4. All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee.
5. The entire Minnesota (Democrats and Republicans) Congressional delegation oppose this project. The Wisconsin Democratic Congressional delegation (including Congressman Gunderson in whose district the dog track is located) oppose the project.

I certainly will appreciate it if you will meet with me and two representatives of the tribes as soon as you can work it into your schedule, since a decision by Interior is imminent. We are available on a 24-hour notice.

Yours very truly,



Patrick J. O'Connor

PIO:shy
Date 10/1/93

EOP 064263

HUD FOIAL 0009

Mr. Harold Ickes
May 8, 1995
Page 1

blind copies:

1. Chairman Don Fowler - David Mercer
2. Larry Kimo
3. Persons attending Friday meeting with Fowler

EOP 064264

HUD FOIA 00010

May 18, 1995



MEMORANDUM FOR HAROLD IKES

FROM: JENNIFER O'CONNOR

SUBJECT: INDIAN GAMING IN WISCONSIN

The attached information from Patrick O'Connor refers to a proposal at Interior to allow three Wisconsin tribes to establish a casino at a bankrupt dog track in Hudson, Wisconsin.

The Secretary of the Interior has the discretionary ability to create trust lands to enable the tribes to establish the casinos. However, by statute, he must first assess the economic costs and benefits to the local community.

The Department is reviewing the proposal. Staff met last night and came up with a preliminary decision, which will likely not be final for another month. The staff believe it is probably a bad idea to create the trust land to allow the establishment of the casino. Their reasons are as follows (NOTE - this information is not public and is confidential at this point):

The local community is almost uniformly opposed to the proposed casino. The tribes that want to establish it live 250 miles away, but no one in the immediate area wants it established, including the Mayor, City Council, other local officials and Congressman Gunderson. The Department feels that this local opposition is an indication of adverse impact on the local community.

The Minnesota delegation is also uniformly opposed to the proposal. Minnesota tribes located near the state border feel they would be adversely impacted by the competition.

It is likely that a decision to approve this proposal would result in a spotlight being shone on the Indian Gaming Regulatory Act, which is under some legislative pressure at the moment. The Department wants to avoid this kind of negative attention to the Act.

On the other side of the argument is the support of free market economics. Some Department staff think the bottom line here is the Minnesota and Wisconsin tribes who are benefitting enormously from gaming don't want the competition, and are able to hire bigger lobbyists than the three very poor tribes who want the casino. However, the staff don't think this argument negates the uniform opposition from the local community.

The current status is this: the Department is reviewing the comments received during the 60-day period which ended April 30. It has committed to making a final decision within a

EOP 064394



THE SECRETARY OF THE INTERIOR
WASHINGTON



October 10, 1997

Honorable Fred Thompson
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I understand your staff has requested written notification of my decision not to be privately interviewed on issues relating to the Department's denial of an application by three tribes in Wisconsin to place a parcel of land located in Hudson, Wisconsin in trust for a casino development.

Let me explain the reason for my decision against a private interview. Given that numerous allegations are now being aired in public before the Committee, I would respectfully request that the Committee make any inquiries of me in public as well. I of course remain fully willing to respond in public at any convenient time.

I am troubled by the fact that at least one deposition taken by your staff on this matter, that of Mr. Paul Eckstein, has found its way into the news media, while it and others taken by your staff remain unavailable to the public. The result has been the circulation of a good deal of incorrect information as to what actually occurred with respect to the tribal application here.

For example, while I did meet with Mr. Eckstein on this matter shortly before the Department made a decision on the application, I have never discussed the matter with Mr. Ickes or anyone else in the White House. Mr. Ickes never gave me instructions as to what this Department's decision should be, nor when it should be made.

I do believe that Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct. Mr. Eckstein was extremely persistent in our meeting, and I used this phrase simply as a means of terminating the discussion and getting him out the door. It was not the first time that I have dealt with lobbyists by stating that the Administration expects me to use my good judgment to resolve controversial matters in a timely fashion, nor do I expect it to be the last.

The Indian Gaming Regulatory Act (IGRA) lays out how the Department should make decisions on applications like this one, which was a request to take land not contiguous to an existing reservation into trust for gaming purposes. Indeed, the land applied for here is located between 85 and 188 miles from the reservations of the three applicant tribes.

Section 20 of IGRA says that the decision shall be made after consultation with the applicant tribe and "appropriate State and local officials, including officials of other nearby Indian tribes." Further, applications may be approved only if the Department determines that a "gaming establishment on [the] lands [proposed to be acquired] would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community."

In conducting the consultations required by this section, the Department learned that a Wisconsin Indian tribe situated within 50 miles of the land was adamantly opposed to the application because of the detrimental effect on its own gaming operation. (The three applicant tribes, incidentally, were already operating casino gaming on their own reservations, under compacts approved by the Department of the Interior.)

Further, these consultations revealed that local communities surrounding the land were, contrary to recent press reports, strongly opposed to the concept of developing a casino on the property. The Hudson City Council adopted a resolution expressing opposition, as did the nearby Town of Troy. The Department also received several letters signed by state and local elected officials, including the Wisconsin State Representative in whose district the land is located, expressing strong opposition to casino gaming on the site.

Given the strong opposition of the neighboring tribe and the local communities, and the distance of the site from the three applicant tribes - all undisputed facts in the record before the Department - the Department declined to take the land into trust.

Your staff has already spent many hours deposing officials of this Department who were directly involved in this decision, and who have provided full explanations of the Department's decisionmaking. Yet these basic facts were not presented during the Committee's discussion of this issue this week nor in any other documents that have found their way to the media.

I reiterate my willingness to address this matter publicly before the Committee.

Sincerely,



0: From: SCOTT KERR at "DOI/SOL_HQ 3/21/97 7:47AM (1442 bytes: 19 ...
 ority: Urgent

JOHN LESHY, Heather Sibbison at "INTERIOR-CCM, George Skibine at
 INTERIOR-CCM, DAVE ETHERIDGE, DAVID MORAN, TROY WOODWARD, Tom Hartman at
 INTERIOR-CCM, Hilda Manuel at "INTERIOR-CCM, Michael Anderson at
 "INTERIOR-CCM, ~~***DontUse~~, EDWARD COHEN
 cc: Sokaogon - Decision

----- Message Contents -----

Late yesterday, in a very "meaty decision" (i.e. lots
 to it) Judge Crabb reversed her decision of last June in
 which she had limited plaintiffs' to the administrative
 record and denied them the opportunity to take the
 depositions of senior DOI officials and pursue discovery in
 an effort to uncover undue political influence.

Plaintiffs will now get to pursue discovery and will be
 able to take depositions. It is not clear whether they will
 be able to take Secretary Babbitt's deposition but they
 certainly will be able to take Heather S.'s, Mike
 Anderson's, John Duffy's and others. She has set a hearing
 before a Magistrate on April 11 to determine the scope of
 the discovery and to discuss scheduling.

Judge Crabb did decline to reconsider her decision that Mike
 Anderson had authority to act.

I am having copies made.



*Not a
 record
 of
 the
 hearing*

1989) From: Heather Sibbison at "IOS 4/9/97 3:58PM (1475 bytes: 1 ln)
 To: David Hayes, JOHN LESKY at "DOI/SOL_RQ
 Subject: Congressional Investigation

----- Forwarded -----
 From: Michael Anderson at "IIAOIRM 4/8/97 12:57PM (1198 bytes: 1 ln)
 To: ANNE SHIELDS at "ISOL, Heather Sibbison at "IOS, SCOTT KEEP at "ISOL,
 Susan Kaslow at "IOS
 Subject: Congressional Investigation

----- Message Contents -----

I was contacted yesterday by Ken Ballen, a staff investigator for Henry Waxman. Waxman's staff is doing the minority work on the DNC investigation and Rep. Burton the majority work. Ken's inquiry related to the Hudson dog track case and the role of the DNC. I mentioned that the matter was in federal court in Wisconsin and that discovery issues were being discussed including the possible deposition of Fowler. This seem to satisfy Ken (who coincidentally is someone I worked with on the Hill). I do not know whether Burton's staff will make an inquiry but will refer them to Scott Keep if they do.

Susan - could you give this to Anne? I can't access her e-mail.
 Heather -- could you give to David H.? He's not on my system.



S. Todd Farns
 Attorney at Law

Telephone
 [REDACTED]
 Telecopier
 [REDACTED]

Friebert, Finerty & St. John, S.C.
 Two Plaza East - Suite 1250
 330 East Kilbourn Avenue
 Milwaukee, Wisconsin 53202

ROBERT M. FRIEBERT
 ATTORNEY AT LAW

FRIEBERT, FINERTY & ST. JOHN, S.C.
 TWO PLAZA EAST - SUITE 1250
 330 EAST KILBOURN AVENUE
 MILWAUKEE, WISCONSIN 53202

TELEPHONE
 [REDACTED]
 TELECOPIER
 [REDACTED]

750520



43] From: SCOTT KEEP 4/8/97 2:18PM (1069 bytes: 1 ln)

Priority: Urgent

Re: JOHN LESHY, EDWARD COHEN

Subject: Congressional Investigation

----- Message Contents -----

I was contacted yesterday by Ken Ballen, a staff investigator for Henry Waxman. Waxman's staff is doing the minority work on the DNC investigation and Rep. Burton the majority work. Ken's inquiry related to the Hudson dog track case and the role of the DNC. I mentioned that the matter was in federal court in Wisconsin and that discovery issues were being discussed including the possible deposition of Fowler. This seem to satisfy Ken (who coincidentally is someone I worked with on the Hill). I do not know whether Burton's staff will make an inquiry but will refer them to Scott Keep if they do.

Susan - could you give this to Anne? I can't access her e-mail.

Heather -- could you give to David H.? He's not on my system.

000020





United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TRANSMISSION NOTICE



DATE: July 14, 1995

URGENT

TRANSMISSION #: [REDACTED]

VERIFICATION #: [REDACTED]

*All -
Hudson doghouse*

FROM: Heather Gibbison

TO: Councilwoman Beverly Benjamin

AGENCY: St. Croix Tribal Council

FAX #: [REDACTED]

NO. OF PAGES: (INCLUDING THIS PAGE) 2

COMMENTS: *Councilwoman Benjamin:*
Please find attached a corrected copy of
John Cuffy's letter to Chairman Taylor, responding to
the Chairman's letter to Secretary Babbitt concerning the Hudson
doghouse. The attached version has the correct date (today) - the
error occurred was made this afternoon. If you would be so kind to
dispose of the old version, we'd be most appreciative. Please do not
hesitate to call me if I can answer any questions. *Heather Gibbison*

105407



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 14 1995

Mr. Lewis Taylor
Tribal Chairman
St. Croix Tribal Council
P.O. Box 287
Hertel, Wisconsin 54845

Dear Chairman Taylor:

Thank you for your letter of June 1, 1995, in which you expressed the St. Croix Tribal Council's opposition to the application the three bands of the Chippewa Tribe (the Red Cliff Band of Lake Superior Chippewa Indians, the Sokoagan Chippewa Community of the Mole Lake Band, and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians) to take into trust the St. Croix Meadows Greyhound Racetrack for gaming purposes.

In part, based on the opposition of the St. Croix Tribal Council, we have announced that the Department has decided to decline to exercise its discretion to take the dog track into trust.

I trust that this action by the Department addresses your concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read "John J. Duffy".

John J. Duffy
Counselor to the Secretary

COMMUNICATION CONFIRMATION REPORT

07-18-95 09 14

INPUT TIME : 05:18 AM
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FILE NO. : FBI (02 PAGE)

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20740

TRANSMISSION NOTICE

DATE: July 14, 1995

URGENT

TRANSMISSION #: [REDACTED]

VERIFICATION #: [REDACTED]

FROM: Shelley Sublin

TO: Councilwoman Beverly Benjamin

AGENCY: St. Croix Tribal Council

FAX#: [REDACTED]

NO. OF PAGES: (INCLUDING THIS PAGE) 2

COMMENTS: Councilwoman Benjamin:
Please find attached a corrected copy of
John Coffy's letter to Chairman Taylor, regarding the
Chairman's letter to Secretary Bennett concerning the Holston
doghouse. The attached version has the correct date (today) - the
original version was made this afternoon. If you would be so kind to
dispose of the old version, it'd be most appreciated. Please do not
hesitate to call me if I can answer any questions. Shelley Sublin



United States Department of the Interior

original
in file

OFFICE OF THE SECRETARY
Washington, D.C. 20240

January 12, 1998



Honorable Dan Burton
Chairman, Committee on Government
Reform and Oversight
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This letter supplements the Department's response dated January 2, 1998 (January 2 response), to the Committee's request for documents dated August 20, 1997, and the subpoena issued December 12, 1997, for all records relating to the St. Croix Meadows Greyhound Racing Park (Dog Track).

In the January 2 response we described our comprehensive search for records pertaining to the Dog Track and advised you that the search was nearly complete, but that there were a few individuals remaining to be interviewed who we could not reach until they returned from extended holiday leave or travel. We have now concluded our interviews and believe we have collected all responsive records that we expect to receive. The records we have received since January 2 are identified on the enclosed indices, and include the following:

- 1.) Additional records relating to the ongoing litigation, some of which we believe may not have been among those documents already forwarded to the Committee.
- 2.) A travel authorization for a former employee, Mr. Thomas Collier, and one for a current employee, Mr. Antonio (Tony) Montes.
- 3.) A document that was identified, in our January 2 response to the Committee, on the index of records provided by the Great Lakes Branch of Real Property Management Office (GLRPM) of the Bureau of Indian Affairs in Wisconsin, but which was inadvertently left out. When we later compared that office's index with the material forwarded to us, we discovered the missing page and requested another copy.
- 4.) Some additional records from Mr. George Skubine which he obtained from other Solicitor's Office employees only since he returned to the Solicitor's Office from the Indian Gaming Management Staff (IGMS) last year. Although we are confident that copies of these records already have been provided to you, we are taking the precaution of providing them to you because they complete Mr. Skubine's file. We already have provided records from the IGMS including the Administrative Record (which you have in its entirety, including the volume of

privileged records).

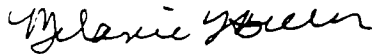
5.) A page from the calendar of Ms. Stephanie Hanna, Office of Public Affairs, with notations.

Please note again that we are requesting that care be given to all of the documents we continue to provide, many of which are documents for which privileges or defenses could be asserted in response to a request for the documents from other than the Committee in the exercise of its legislative or oversight authority. Again, these may include deliberative-process, attorney-client, and attorney-work-product privileges. Additionally, some of the documents contain personal privacy and proprietary financial information that would be exempt from disclosure under the Freedom of Information Act.

We understand the documents we are providing will be used only for the official purposes of the Committee. Accordingly, should you receive a request or determine that a disclosure outside the Committee is necessary in the exercise of the Committee's responsibilities, we request that we be provided an opportunity to discuss our concerns with you prior to any such release.

If you have any questions or wish to make arrangements for review of any of the records we have identified throughout any of our communications with your Committee, you may contact Nancy Appler of my staff on [REDACTED].

Sincerely,



Melanie L. Beller
Assistant to the Secretary
and Director of Congressional
and Legislative Affairs

Enclosures

Copy to Honorable Henry Waxman
Ranking Minority Member

[The deposition of George Tallchief Skibine—Day 1 follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: GEORGE TALLCHIEF SKIBINE—DAY 1

TUESDAY, JANUARY 13, 1998

The deposition in the above matter was held in Room 2157-Lounge, Rayburn House Office Building, commencing at 12:15 p.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Barbara Comstock, Chief Investigative Counsel; James C. Wilson, Senior Investigative Counsel; Robert J. Dold, Jr., Investigative Counsel; Thomas Bossert, Investigative Staff Assistant; Kenneth Ballen, Minority Chief Investigative Counsel; David Sadkin, Minority Counsel; and Michael Yeager, Minority Counsel.

Also present: Representative Stephen Horn.

For MR. SKIBINE:

TIMOTHY S. ELLIOTT, ESQ.
Deputy Associate Solicitor-General Law
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Mr. WILSON. Good morning, Mr. Skibine. On behalf—I think I have actually missed that, perhaps. Good afternoon. On behalf of the members of the Committee on Government Reform and Oversight, thank you very much for appearing here today. I note you are appearing voluntarily, and I thank you very much for that.

This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and notary public and I will now request that the reporter place you under oath.

THEREUPON, GEORGE TALLCHIEF SKIBINE, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. WILSON. I would like to note for the record those who are present at the beginning of this deposition. My name is James Wilson. I'm the designated majority counsel. And I am accompanied today by Robert Dold. Minority counsel designated for today's proceedings is Mr. Ken Ballen. He is accompanied today by Michael Sadkin.

Mr. SADKIN. David.

Mr. WILSON. David Sadkin. Accompanying the deponent is Mr. Timothy Elliott of the Department of the Interior. Also present today is Congressman Steve Horn of California.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath your testimony here today has the same force and effect as if you were testifying before the committee or in a courtroom.

If I ask you about conversations you have had in the past and you are unable to recall the exact words used in that conversation, you may state you are unable to recall the exact words and then give me the gist or substance of any such conversation to the best of your recollection. If you recall only part of a conversation or only part of an event, please give me your best recollection of that conversation or that event. If I ask you whether you have any information about a particular subject and you have overheard other persons conversing with each other regarding that subject, please tell me that you do have such information and indicate the source from which you derive such knowledge.

Majority and Minority committee counsels will ask you questions concerning the subject matter of this investigation. Minority counsel will ask questions after Majority counsel has finished. If Congressman Horn or any other Congressman who chooses to attend today's proceedings would like to ask questions, he or she will be afforded an immediate opportunity to do so, and at the conclusion of Congressman's questions we will resume questioning at the point that we left off.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights. Any objections raised during the course of this deposition shall be stated for the record. If the witness refuses to answer a question, Majority and Minority counsel will confer to determine whether the refusal is proper. If Majority and Minority counsel agree that the question is proper, the witness will be asked to answer the question. If an objection is not withdrawn, the Chairman or a Member designated by the Chairman may decide whether the objection is proper.

This deposition is considered as taken in executive session of the committee, which means that it may not be made public without the consent of the committee pursuant to clause 2(k)(7) of House Rule XI.

At the conclusion of this deposition the reporter will prepare a transcript, and we will endeavor to provide you with the transcripts of this proceeding as soon as possible. I will contact Mr. Elliott directly or somebody from the Majority staff will contact Mr. Elliott and provide him with a copy of that transcript. Generally it has been taking one or two days, and we will try to get you a transcript by Thursday for your review of the transcript.

Committee staff may make any typographical and technical changes requested by you. Substantive changes, modifications, or clarifications must be accompanied by a letter requesting the changes and a statement of your reasons for each proposed change. A letter requesting substantive changes must be signed by you. Any substantive changes will be included as an appendix to the transcript conditioned upon your signing of the transcript.

Do you understand everything we have gone over so far?

The WITNESS. Yes.

Mr. WILSON. If you don't understand a question, please say so and I will repeat it or rephrase it so that you do understand the question. Do you understand that the answer should tell me if you do not understand the question I have asked you?

The WITNESS. Okay.

Mr. WILSON. The reporter will be taking down everything we say and will make a written record of the deposition. Please give verbal, audible answers in order to assist the reporter.

The WITNESS. Uh-huh. Just kidding.

Mr. WILSON. Your testimony is being taken under oath, as if you were in court, and if you answer a question it will be assumed you understood the question and the answer was intended to be responsive to it. Do you understand that?

The WITNESS. Yes, I do.

Mr. WILSON. As I mentioned at the very beginning, we do realize you are here voluntarily and we thank you for appearing here voluntarily. Do you have any questions about this deposition before we begin the proceeding?

The WITNESS. No.

Mr. WILSON. Thank you. I think it is an appropriate time for any statement to be made. Mr. Elliott?

Mr. ELLIOTT. Mr. Wilson, I thank you for acknowledging that Mr. Skibine is here voluntarily. He is, as have all the other witnesses, been from the Department of the Interior. We at the Department of the Interior and witnesses who have been here are cooperating as fully as possible with the committee's investigation in an attempt to get at the truth and to get all the facts on the record surrounding the Hudson Dog Track application and the decision thereon.

Mr. Skibine, as you know, has been deposed before. He was deposed in November by the Senate staff. We believe that he has very little, if anything, to add, notwithstanding that you may have other documents. They are in the record and are fairly plain in the record and he can respond to questions about those.

We would hope that in accordance with our letter to the Chairman and the Chairman's letter back to the Department of the Interior to me that we would not cover the same ground and spend as much time as we have in Mr. Skibine's earlier deposition and as we did last night for Ada Deer's deposition. We believe that the record is complete and that there is, as I said before, very little, if anything, that Mr. Skibine can add to that.

Mr. WILSON. Thank you. Mr. Ballen.

Mr. BALLEEN. Thank you, Mr. Wilson. Minority has similar objections that have been noted for the record before in previous depositions and those objections are continuing. Thank you.

Mr. WILSON. I have a very short opening statement. I have never made an opening statement before, so this is new territory. I very much want to put this on the record.

Yesterday this committee took the deposition of former Assistant Secretary Ada Deer. When I returned to my office last evening I found the envelope that I am now

holding in my hand. It was delivered after I had left my office to conduct Ms. Deer's deposition. It was delivered too late for the contents to be discussed with Ms. Deer.

For the record, I would also like to add that the material in this package was not provided to this committee until after we deposed Mr. Hartman, Ms. Manuel and Mr. Lader. Furthermore, it was not delivered until after it was well nigh impossible to schedule additional depositions prior to scheduled hearings next week.

I have questions about the timing of the delivery for Mr. Skibine and I have questions about the contents of this material for Mr. Skibine. But I might also add that this envelope contains the schedule for Ms. Deer and, again I will note for the record that it arrived after Ms. Deer's deposition had begun.

I would like to read some excerpts from a few documents contained in this envelope. The first document is a memorandum for Scott Keep from David E. Jones.

Mr. BALLEEN. Excuse me. Have we received a copy? I take it we have not, on the minority side.

Mr. WILSON. I will provide a very precise statement of what I received. This is an envelope. It's a large brown manila envelope, hand addressed to Honorable Dan Burton, indicates by hand 1/12/98, attention Jim Wilson, 2157 RHOB.

Contained in this envelope is a letter on United States Department of the Interior letterhead. It's dated January 12, 1998. It's addressed to the Honorable Dan Burton. Begins Mr. Chairman. Continues for a page and a half. It is signed by Melanie L. Beller, B-E-L-L-E-R, whose testimony perhaps we will take in the not too distant future. She is the Assistant to the Secretary and Director of Congressional and Legislative Affairs.

It's listed that there are enclosures. It states on the bottom copy: To Honorable Henry Waxman, Ranking Minority Member.

I can't answer your question.

Mr. BALLEEN. I don't believe we have received this as of now, but anyway.

Mr. WILSON. Well, if the Department of the Interior has not provided you documents in a timely fashion, it may not be the first time that that's happened.

The first document is a memorandum for Scott Keep from Mr. David E. Jones, an Assistant United States Attorney employed at the U.S. Department of Justice. Last week Mr. Elliott brought Mr. Keep to the deposition of Ms. Manuel and unsuccessfully sought to have him admitted to the deposition.

This document is dated February 14, 1996. I have provided Mr. Skibine with this document. It has been marked Exhibit GTS-1 for inclusion in the record, and I will give Mr. Skibine an opportunity to review the document, if he would like to do so. [Skibine Deposition Exhibit No. GTS-1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

The WITNESS. I have never seen this.

Mr. WILSON. That's why I'm providing you an opportunity to review it right now.

The WITNESS. You want me to read it?

Mr. WILSON. What I will do is, I will allow you to do whatever you choose to do. I'm going to read selective sections from this document and ask you questions about those sections. So perhaps it is best for all of us if you would like to take a moment, give Congressman Horn a moment to read this, he has not seen this, and then we will discuss it.

Mr. BALLEEN. I will represent for the record we have not seen it as well.

Mr. WILSON. Fine.

The WITNESS. Okay, I have read it.

Mr. WILSON. Okay.

EXAMINATION BY MR. WILSON

Question. At the bottom of page 1, in the paragraph that begins at the very bottom, it reads: We understand the Department's view that it first reviews an application under section 465 before engaging in the section 2719 analysis, but the record in this case shows that the sequence was reversed: The Department received the area offices' section 2719 recommendation, and began its review of same, in November 1994, while the Department did not receive the section 465 package from the area office until April 1995.

Have you seen this sentence before?

Answer. No, I haven't seen this document before.

Question. Turning our attention to the section marked section 3, the first two-thirds of this paragraph reads as follows: It begins under the heading Alleged Defects in the Section 2719 Process Are Problematic.

It reads: Now that we have reviewed the administrative record in greater depth, we have determined that the alleged problems with the 2719 process are significant. We are primarily concerned about our ability to show that plaintiffs were told about and given an opportunity to remedy the problems which the department ultimately found were outcome determinative. Area directors are told to give applicants an opportunity to cure problems, and it will be hard to argue persuasively that applicants lose this opportunity once the central office begins its review. The administrative record, as far as we can tell, contains no record of department meetings or communications with the applicant tribes in which the Department's concerns were expressed to plaintiffs. These communications may have occurred but they simply are not documented in the record.

Have you had any discussions with Mr. Jones that would lead them to come to this conclusion?

Answer. No, I have not.

Question. It follows, and I will quote, in this paragraph: The second, and related, problem is that the Department appears to have changed in this case its past policy of requiring "hard" evidence of detriment to the community. The plaintiffs will therefore argue that they had no notice, either through past policy or through direct departmental communication, that the "soft" concerns expressed by local officials would jeopardize their application.

Have you had any conversations with Mr. Jones about the substance of this statement that I have just read to you?

Answer. No, I have not.

Question. Finally, at the bottom of this paragraph, it states: Finally, the record shows that there was no consultation with the State in contravention of section 2719.

Is that a correct statement?

Answer. Yes, it is.

Mr. WILSON. I have provided Mr. Skibine with a document that has been marked Exhibit GTS-2. It's a letter from Secretary of the Interior, Bruce Babbitt, to The New York Times. The date of the letter is January 2, and it was published on January 4th of 1998. I have one question about one statement in this.

[Skibine Deposition Exhibit No. GTS-2 was marked for identification.]

The WITNESS. I haven't seen this either.

Mr. WILSON. Fine, I will give you an opportunity to read it.

Mr. BALLEEN. Can I ask you something off the record?

Mr. WILSON. Let's stay on the record.

Mr. BALLEEN. Then I will ask you afterwards.

The WITNESS. Okay, I have read it.

EXAMINATION BY MR. WILSON:

Question. At the bottom of the second paragraph the statement is made, the Republican governor of Wisconsin opposed the casino.

I have left out two words from that sentence, but it says, in full, the Republican governor of Wisconsin and many others opposed the casino. Do you know this to be true?

Answer. What, that the Republican governor of Wisconsin opposed?

Question. Yes.

Answer. No.

Question. You do not know this to be true?

Answer. No.

Question. Is this statement reflected anywhere in the record that you have prepared of—and I'm going to refer to this matter as the Hudson Dog Track matter as a matter of convenience.

Answer. Sure.

Question. Is this reflected anywhere in the record?

Answer. What is?

Question. Of the fact that, as asserted by Secretary of the Interior Babbitt, that the Republican governor of Wisconsin opposed the casino?

Answer. I don't believe so.

Question. Do you know whether Secretary of the Interior Babbitt has any information that he did not include in the record of this matter?

Answer. I have no idea.

Question. And just to be very clear, to characterize what you have said, the record does not support this statement; is that correct?

Answer. I don't think there is anything in the record signed by the governor of Wisconsin saying that he opposes the casino.

Question. Do you know whether there is a requirement for consultation with the State in section 2719?

Answer. In 2719 there is a requirement for consultation with appropriate State and local officials.

Question. And who would those officials be?

Answer. Well, at the time the area office was making its recommendation, there was no guidance on which those appropriate State and local officials would be. But now I think we have issued in this year, earlier this year, a checklist that indicates that in our opinion, our guidance in the area is that the State governor and the Attorney General of the State are appropriate officials to be consulted.

Mr. WILSON. I would like the record to reflect that Mr. Tom Bossert, who is with the majority staff, has entered the room.

I have provided Mr. Skibine with a document that has been marked Exhibit GTS-3. It is titled Statement of Secretary Bruce Babbitt Before the Senate Committee on Governmental Affairs, October 30, 1997. And if you would like to take a moment just to review that, please do.

[Skibine Deposition Exhibit No. GTS-3 was marked for identification.]

The WITNESS. Well, that won't be necessary.

Mr. WILSON. Okay.

EXAMINATION BY MR. WILSON:

Question. As I represented a moment ago, this is a statement provided by Secretary of the Interior Babbitt to the Senate during its investigation of this matter. Did you help in the preparation of this statement?

Answer. No, I did not.

Question. Did you advise anybody regarding the preparation of this statement?

Answer. No, I did not.

Question. Did you hear the Secretary read this statement at the Senate hearings?

Answer. I think I heard part of it. We had trouble getting the reception on TV at work, so I think we missed part of it. And so I can't guarantee for sure that I heard him say the whole thing.

Question. At the top of the second page there's a point that's marked fourth, and I would like to read it. The Secretary made this statement under oath; that the Department based its decision solely on the criteria set forth in section 20 of the Indian Gaming Regulatory Act. Is this true?

Answer. I think the decision dated July 14th, 1995, reflected a decision that was based both on section 20 of the Indian Gaming Regulatory Act and part 151 of the Indian Reorganization Act of 1934.

Question. And you were the ultimate decisionmaker in this case; is that correct?

Answer. No, I was not. No.

Question. Who was the ultimate decisionmaker?

Answer. Michael Anderson, Deputy Assistant Secretary, signed the July 14, 1995 letter.

Question. Well, I think what you said speaks for itself, but to characterize this again, is it fair to characterize the Secretary's statement as an incorrect statement?

Answer. Well, it's missing the basis for the decision.

Question. Okay. I just want to spend a moment more on this because it's something that goes to the heart of this issue. If I asked you the question, the decision to reject the Hudson Dog Track application was based solely on section 20 of the Indian Gaming Regulatory Act, would you say that that was correct or false?

Answer. It would be false.

Question. Which indicates that the Secretary of the Interior made a false statement before the Senate?

Answer. You can draw that conclusion for yourself.

Question. In providing advice to the ultimate decision maker, who you have indicated was Michael Anderson, did you rely on any information that was not in the record?

Answer. No, I did not. In terms of written evidence.

Question. Who is Tom Collier?

Answer. Tom Collier was the Chief of Staff to Secretary Babbitt. You know, at the beginning of—I don't know exactly when he was there, but he certainly was there in parts of 1994-'95, sorry.

Question. Notwithstanding the gravity of the proceedings, always feel free to correct yourself if misstatements are made. Nothing like that is ever held against anybody.

Where does Mr. Collier work now?

Answer. I think he works for a law firm in Washington.

Question. Do you know the name of the law firm?

Answer. Well, I think it's Steptoe & Johnson. But, you know, I don't know that for sure. It's just from what I have heard.

Question. Have you had any professional dealings with Mr. Collier since his departure from the Department of the Interior?

Answer. No, I have not. I don't think I have.

Question. Are you aware of whether Mr. Collier took a trip to Green Bay, Wisconsin in April of 1995?

Answer. Yes, I'm aware that he took a trip to Green Bay, Wisconsin in April 1995. If you can tell me what the purpose was—

Question. I will provide you a document in a moment. Do you remember the purpose?

Answer. If you could tell me what the purpose was, I can tell you whether I remember it to be that year.

Question. It's my understanding he attended a National Indian Gaming Association annual meeting.

Answer. Okay, yes. That's correct.

Question. Did you also attend that meeting?

Answer. Yes, I did.

Question. Who else from the Department of the Interior attended that meeting?

Mr. BALLEEN. Sorry, could we have a date on that meeting?

Mr. WILSON. I will provide this document in a moment. April 19 and 20, those are the two days of the trip. There was a speaking engagement on Wednesday, April 19.

Mr. BALLEEN. What year? I'm sorry.

Mr. WILSON. 1995. Sorry.

The WITNESS. I do not know.

EXAMINATION BY MR. WILSON:

Question. But you yourself attended and Mr. Collier attended?

Answer. Yes, that's right. Not together. In fact, I didn't see Mr. Collier there. From what I recall, he went in and made a speech and left. Then I got there later during the conference and I made a presentation. I didn't get to see him there, no.

Question. Did Mr. Collier have any discussions with you prior to attending the meeting?

Answer. Yes, he did.

Question. Did you assist him in preparation for the speech that he gave at the meeting?

Answer. Yes, we did.

Question. What did you provide for him?

Answer. We prepared a briefing book, from what I recall, on Indian issues.

Mr. WILSON. I have provided Mr. Skibine with a document that has been marked for the record Exhibit GTS-4. It's got a number of pages and I'm going to ask you specific questions about one of the pages at the end.

[Skibine Deposition Exhibit No. GTS-4 was marked for identification.]

The WITNESS. Okay.

EXAMINATION BY MR. WILSON:

Question. Directing your attention to the second to last page of this material, at the very bottom it indicates that Mr. Collier was scheduled to stay at the Oneida Radisson Hotel.

Answer. Now, where is that?

Question. At the very bottom of the page.

Answer. Okay. All right. Sure.

Question. Have you been to that hotel?

Answer. I don't know. The conference was right outside the airport at a hotel owned by the Oneida Tribe of Wisconsin. I don't know if that's the name of the hotel.

Question. Is there a casino at the tribe?

Answer. At the hotel?

Question. Sorry, yes.

Answer. There is a casino next to the hotel.

Question. Is it associated with the hotel?

Answer. Yes, as far as I can tell.

Question. And I don't make any representations that I know anything more than that at this point.

Were you aware in 1995 that the Oneida Tribe was one of the tribes that was opposed to the Hudson Dog Track application?

Answer. I was aware at some point in 1995 that the Oneida Tribe of Wisconsin was opposed to the Hudson Dog Track application, yes.

Question. And how were you aware?

Answer. I think in the record, from what I recall, they may have submitted their views opposing the dog track application, and I attended a meeting, at some point in the first part of '95, with the Oneida Tribe, where they expressed their opposition to the acquisition.

Question. And do you know Ms. Debbie Duxtator?

Answer. Yes, I do.

Question. Did she ever express opposition to the Hudson Dog Track application to you?

Answer. I think that she was at the meeting that I attended at some point in 1995 and she expressed opposition to the dog track application.

Question. Are you aware of Ms. Duxtator's ever attending White House coffees?

Answer. I'm not, no.

Question. Are you aware of the Oneida Tribe ever having made any political contributions?

Answer. No.

Question. Do you have a general understanding that the Oneida tribe was politically active?

Answer. No.

Question. Just directing your attention to the final entry on this page, it reads res. 13297; and then in parens it says, you are supposed to be getting a \$269 jacuzzi suite for \$69.

Did you stay at the Oneida Radisson Hotel, to your recollection, in 1995, when you attended this meeting?

Answer. No, I did not.

Question. Were you aware of where Mr. Collier was staying at the time?

Answer. No, I was not.

Mr. WILSON. I'm providing Mr. Skibine with a document which has been marked for the record Exhibit GTS-5. It's a memorandum to B. J. Thornberry, department Chief of Staff, through Tim Elliott, from Antonio Montes. It's dated May 31, 1995.

If you could take a moment to review that document, I have a very specific question about one sentence in this document.

[Skibine Deposition Exhibit No. GTS-5 was marked for identification.]

The WITNESS. Okay, I want to state that I have never seen that either.

Mr. WILSON. Fine. Absolutely.

The WITNESS. Okay, I have read the document.

EXAMINATION BY MR. WILSON:

Question. There is one sentence here, about two-thirds of the way down the printed text, that begins "finally". The full sentence says, finally the political sponsor paid for the hotel for one night in Milwaukee. The per diem rate for the hotel was \$67, so we have credited the political sponsor with paying that amount.

My question, I believe you have already answered it but I will ask the question again, have you ever seen this document?

Answer. No, I have not.

Question. So that concludes questioning of some of the materials we received last night. There are many more, and we could be here more than all day if I were to go through each one of them. Certainly some of the documents will come up in our hearings next week that have not been discussed today.

But let me ask you, Mr. Skibine, were you aware that this committee would be receiving additional documents last night?

Answer. No, I was not.

Question. Could you please give us a brief employment history from—first of all, did you attend college?

Mr. BALLEEN. Before he does that, I want to say something for the record. Since we have not received any of those documents sent to you, if you could provide us with a copy, I would appreciate it. We will check to see if we have received them, but I don't believe we have.

Mr. WILSON. If the Department of the Interior will not provide you copies of the documents, I certainly will provide you with copies.

EXAMINATION BY MR. WILSON:

Question. Did you attend college?

Answer. Yes.

Question. Where did you attend college?

Answer. University of—New York University and University of Chicago.

Question. Could you provide a brief employment history from the time you graduated from college until the present?

Answer. Well, after college I went to law school at the University of Minnesota Law School, and then I joined the Department of—the Bureau of Indian Affairs in 1977. I was there employed in various positions, and in 1985, I joined the Solicitor's Office as an attorney in the Division of Indian Affairs.

In 1995, in February of 1995, I became the Director of the Indian Gaming Management Staff. And in August of 1997 I rejoined the Solicitor's Office, where I am the Assistant Solicitor for the branch of General Indian Legal Activities. And at this point I am also the Acting Deputy Associate Solicitor for the Division of Indian Affairs.

Question. What is your current salary?

Answer. I think it's roughly \$85,000.

Question. What was your salary in July 1995?

Answer. In July 1995—you know, it would have been the GS-15, step whatever, whatever I was, 3 or 4. I don't exactly recall. I would have to have my earning statements to see specifically.

Question. Well, approximately what was your salary in July of 1995?

Answer. Let's say 80, 82. I don't know. Around there somewhere.

Mr. WILSON. Actually, perhaps that's material you can provide for us, and we would ask Mr. Elliott to provide that information for us after this deposition.

The WITNESS. Can you make a note?

Mr. ELLIOTT. Which do you want? July '95 salaries?

Mr. WILSON. His current, but, yes, the July 1995 salary.

The WITNESS. I can provide a pay slip from my current. That's the approximate also.

Mr. WILSON. Fine.

EXAMINATION BY MR. WILSON:

Question. What was your salary in January of 1993?

Answer. Of 1993? Well, once again, then I was in the Office of the Solicitor as an attorney, as a GS-14, step 6, I think. And it must have been the 75 something thousand dollars per year. And, once again, I think I still have those records if you want that provided to you.

Mr. WILSON. I will ask Mr. Elliott to provide that to us afterwards.

The WITNESS. Sure.

EXAMINATION BY MR. WILSON:

Question. You have actually answered most of my second question. I was going to ask for your pay grade. What is your current pay grade?

Answer. I am a GS-15, step 4, I think.

Question. Have you discussed the fact that you are being deposed here today with anybody but Mr. Elliott?

Answer. I have discussed the fact that I'm being deposed with Mr. Elliott and with the Solicitor.

Question. And who is that?

Answer. John Leshy and with Mr. Elliott's supervisor, Karen Sprecher.

Question. And are those the only individuals that you have discussed the fact of this deposition with?

Answer. The facts of the deposition?

Question. The fact that you were actually coming to be deposed today.

Answer. Oh, I probably mentioned I'm being deposed to many, many more people than that. I can't even—you know, other than casually in the office. Everyone in the Solicitor's Office in the Division of Indian Affairs knows I'm being deposed.

Question. So moving to the specifics, who have you had substantive conversations about potential subjects of this deposition with?

Answer. Oh, only with Mr. Elliott.

Question. Has anybody discussed any of the other information that has been brought to our attention through the course of other depositions with the House of Representatives?

Answer. Can you repeat the question?

Question. Sure. Has anybody discussed with you any information that has been communicated to this committee in other depositions?

Answer. Yes.

Question. And who has done that?

Answer. Mr. Elliott.

Question. And what type of information has he discussed with you?

Answer. I can't recall exactly. We had a discussion about Ada Deer's deposition yesterday in very general terms. And what deposition—

Mr. ELLIOTT. We're getting into an area where we're talking about privileged information.

EXAMINATION BY MR. WILSON:

Question. So I will ask a very broad question. Has Mr. Elliott discussed the substance of other depositions that he has attended with you?

Answer. No.

Question. He has not?

Answer. No, he has talked about some of the issues raised in Ada Deer's.

Question. In other depositions?

Answer. That's about the only one that I can recall, yes.

EXAMINATION BY MR. WILSON:

Question. Has anyone from the Department of Justice spoken to you about the Hudson Dog Track matter?

Answer. Yes.

Question. Who?

Answer. Mr. David Jones, my attorney in the Hudson Dog Track litigation; Mr. Mark Camelli, also my attorney at the U.S. Attorney's Office in the Hudson Dog Track litigation; and Mr. Edward Pascarelli, also an attorney in Washington, who is handling the Hudson Dog Track litigation.

Mr. HORN. Can you spell the second attorney for me?

The WITNESS. Camelli?

Mr. HORN. Yes.

The WITNESS. Now you are trying me here. Let me give it a shot, C-A-M-E-L-L-I, Camelli. But I may be wrong; there may be only one L; who knows.

Mr. HORN. We won't hold it against you.

The WITNESS. Okay, thanks.

Mr. WILSON. We will correct it and give you an opportunity to correct it, if it comes to anybody's attention.

EXAMINATION BY MR. WILSON:

Question. Are those the only three Department of Justice attorneys that have spoken with you?

Answer. To my recollection, yes.

Question. Have you been spoken to by any FBI agents?

Answer. See, there it is, I missed the boat on that. Yes, in fact, now that you refreshed my memory, I was reviewed by the Department of Justice and the FBI sometime back, and I don't remember the name of the FBI agent, nor do I remember the name of the Justice investigator.

Question. That is fine; that is true. When was that?

Answer. Can I talk to Mr. Elliott?

Question. Yes.

[Witness confers with counsel.]

Answer. Yes. I am told it was around the time of my first deposition before the Thompson committee, so you can find out when that was. Was that November of '97?

Mr. ELLIOTT. The record will show; the deposition shows the date.

EXAMINATION BY MR. WILSON:

Question. And you have only had one deposition before the Thompson committee?

Answer. That is correct, yes.

Question. Have you had any discussions with any congressional personnel about the Hudson Dog Track matter?

Answer. I don't believe so.

Question. Okay. And maybe we can go back and look at this later, but I am including 1995 through the present. Did you attend any meetings on Capitol Hill in 1995?

Answer. Oh, I'm sorry, I thought your question was about this investigation.

Question. No, I understand that; I will make it a very general question.

Answer. Okay.

Question. Have you had any contacts with any congressional personnel in the Hudson Dog Track matter? We will include 1995 until the present.

Answer. Yes, I have.

Question. And who have you had contact with?

Answer. Well, I attended a meeting on February 8, 1995, in Congressman Oberstar's office, at which he and other Congressmen and one Senator were present. I was contacted by the office of Steve Gunderson, the Congressman in whose district the dog track is located, on several occasions during 1995.

Mr. HORN. On the meeting in Oberstar's office, was that a Minnesota delegation pretty much?

The WITNESS. From what I understand, yes.

Mr. HORN. Do you remember the names of the people there?

The WITNESS. No. I would have to refer to notes that I took which are in the record, and if you want, I can do that.

Mr. HORN. Well, I would assume staff has those.

Mr. WILSON. Yes.

Mr. HORN. Staff has it, apparently.

EXAMINATION BY MR. WILSON:

Question. How many decisions have been made since the passage of IGRA—and I will refer to the Indian Gaming Regulatory Act as IGRA as the short name. How many decisions have been made since the passage of IGRA to deny an application to take land into trust for gaming under a section 465 secretarial discretion analysis?

Answer. Offhand, I don't know.

Question. Do you know of any?

Answer. I can't think of it.

Question. Okay.

Answer. To take land into trust?

Question. For gaming purposes, solely on a section 465 analysis, without any IGRA, section 20, analysis involved?

Answer. My answer stays the same.

Question. When you were the director of the Indian gaming management staff in 1995, did you ever ask anybody else at the Department of Justice, has an application ever been determined for taking land into trust for gaming purposes under section 465 by itself?

Answer. I didn't ask anyone at the Department of Justice that question.

Question. Did you know the answer at that time?

Answer. The answer to what?

Question. I am assuming you might have perhaps forgotten now, but do you recall whether you knew the answer at that time?

Answer. The answer to what question?

Question. Whether 465 was used by itself to make a determination of whether land would be taken into trust.

Answer. In '95, during the Hudson Dog Track consideration, no, I didn't have the answer to that.

Question. From 1988 until July 14, 1995, have all decisions about taking land into trust for off-reservation gaming been made under an IGRA section 20 analysis?

Answer. I don't know that; I don't know the answer to that offhand. Can you repeat the question?

Question. Sure. From 1988 until July 14 of 1995, had all decisions about taking land into trust for off-reservation gaming purposes been made under a section 20 IGRA analysis?

Answer. Had all decisions to take land into trust?

Question. For gaming.

Answer. For gaming.

Mr. ELLIOTT. I think the question was off-reservation.

EXAMINATION BY MR. WILSON:

Question. Off-reservation gaming, been used—made using a section 20 analysis?

Answer. If you do take land in trust for gaming off reservation, for gaming, you must comply with the requirements of section 20 of the Indian Regulatory Act.

Question. So your understanding, as the former head of the IGMS staff, is that any analysis done by the Department of the Interior would have to consider section 20 of IGRA in making the determination as to whether land should or should not be taken into trust?

Answer. No. It is if you decide—if the Department decides not to exercise its discretionary authority under the Indian Reorganization Act and the implementing regulations in 25(c), part 151, then we do not reach the determination under section 20 of the Indian Gaming Regulatory Act.

Question. Explaining sort of methodologically how this works, does the Department of the Interior, local and regional and area office, consider a section 465 analysis?

Answer. Yes, they must consider a—well, the section 20 of the Indian Gaming Regulatory Act is not a land acquisition authority, so the area director in the central office must consider—must make a determination to take the land in trust first, under 465 and 151. That is my position.

Question. When did you first hear about the Hudson Dog Track proposal?

Answer. I first heard about the Hudson Dog Track proposal on or around February 8, 1995.

Question. And what is the distinction of the February 8, 1995?

Answer. February 8 is the date of the meeting in Oberstar's office that I referred to earlier, and that was going to deal, relate, to the dog track proposed acquisition.

Question. And I apologize for not remembering this, but when did you become the head of the IGMS staff?

Answer. I think I took over as director of the IGMS staff on or around February 5th, if that is a Monday, of 1995.

Question. At the time, in 1995, did you consider that the three applicant tribes were financially poor?

Answer. Excuse me; did I consider?

Question. That the three applicant tribes were financially poor?

Answer. There was a consideration, because I think one of them, the Red Cliff Band, mentioned at a meeting we had with them that they were financially poor, so that was a consideration. It was considered in that sense.

I am not sure that it is in the record, in terms of their financial conditions. All three tribes, I think, do have gaming establishments on their reservations, but I am not sure they included financial figures on their economic health, and the condition of the casino is in the record.

Question. Did you know at the time what their average per capita income was?

Answer. No, I do not. If I did at the time, I do not recall now.

Question. Was this ever discussed at the Department of the Interior?

Answer. No, I don't think.

Question. Do you think opposition to the Hudson Dog Track proposal would have been valid if it were based solely on economic grounds? And by that I mean, opponent tribes who were opposed to the application of the Hudson Dog Track have indicated in various places that the proposed casino would cut into their revenue and that they would make less money because of the proposed casino. Was that a valid consideration in determining whether the application should be approved or denied?

Answer. It was a consideration that we looked at.

Question. Given that it was a consideration, were there any analyses of whether the representation that there would be an adverse impact on those tribes was correct?

Answer. There was a financial analysis by Tom Hartman, a financial analyst on the staff, on the detriment to the surrounding community and on the impact of the proposed Hudson casino on nearby tribes.

Question. And what did Mr. Hartman say on that subject?

Answer. I think that—let me refer to his June 8 memo here. I think Mr. Hartman concluded that under section 20 of the Indian Gaming Regulatory Act, he did not think that there was a showing of detriment that was not mitigated on the nearby tribes or surrounding communities.

Question. Is there any indication in the record of an adverse impact to the tribes opposed to the Hudson Dog Track application in the record?

Answer. Yes, there is. The tribes opposed to the casino submitted financial analysis to show what they thought was a detriment to their operations.

Question. And did Mr. Hartman review these materials?

Answer. I assume that he did.

Question. And just correct me if I am wrong if I am mischaracterizing what you said. Mr. Hartman came to the conclusion that the representations of the opponent tribes were incorrect?

Answer. Insufficient.

Question. Right, but they did not make a valid point?

Answer. In his opinion.

Question. In his opinion?

Answer. He did not think that the documentation to be submitted was enough for him to recommend that, under section 20 of the Indian Gaming Act, it was sufficient for us to find detriment.

Question. I lost you a little bit in that answer, and I apologize, but I am trying to come to a clear determination, based on materials in the record, as to whether there is any indication that the assertions of the opponent tribe that they would be economically harmed by the application, whether that assertion is supported anywhere in the record by any employee of the Department of the Interior.

Answer. Excuse me, by any employee.

Question. By any employee of the Department of the Interior?

Answer. Mr. Hartman's analysis.

Question. No. In a review of the record, will I be able to find any statement, by any Department of the Interior employee, that says, yes, I agree with the assertions of the opponent tribes that they would—they will be economically harmed? My understanding is, Mr. Hartman said in his opinion, no, they would not be economically harmed. But I am trying to find—

Answer. Something else.

Question. Yes.

Answer. I don't believe there is anything else.

Question. Now in the rejection letter of July 14, 1995, my recollection is that the opposition of neighboring tribes was referred to.

Answer. Yes.

Question. Okay.

Answer. I'm trying to find it.

Question. What was their opposition?

Answer. The July 14th letter?

Question. I am asking, what was the opposition of the opponent tribes? What was their problem? I mean, there was a commercial a few years ago where a person said, "Where's the beef?" Well, that is what we are looking for here. Opponent tribes wrote letters indicating they had a problem with the Hudson Dog Track application?

Answer. Yes.

Question. What was their problem?

Answer. The problem is that I think they said it would adversely impact their gaming operations.

Question. So turning to, you were the supervisor of IGMS staff, you have testified that nowhere in the record, to your knowledge, is there an indication that this was correct.

Answer. The studies submitted by these tribes are in the record.

Question. But they were submitted by the tribes?

Answer. Right.

Mr. ELLIOTT. I think you are mischaracterizing his testimony. I think you asked him whether staff—if there was anything from his staff or the staff or anybody at the Department of Interior.

Mr. WILSON. I did, and I think he said no, but I asked him about material submitted by the opponent tribes. It speaks for itself.

Mr. ELLIOTT. But your current question was, you have testified there is nothing in the record, but there is information in the record.

Mr. WILSON. Material provided by the opponent tribes.

Mr. ELLIOTT. Right?

The WITNESS. That is right, yes.

EXAMINATION BY MR. WILSON:

Question. So we will work through this a little more slowly then because of my imprecision.

It is my understanding that the opponent tribes provided information saying that they thought there would be an economic detriment to themselves, and the Department of the Interior employee reviewed that material and came to a conclusion—his conclusion, you have testified—that there would be no detriment to those tribes?

Answer. Under section 20.

Question. Okay. Under any section, what was the detriment to those tribes?

Answer. Well, I think that under the—when the Secretary decides whether to exercise his discretionary authority to take land in trust, he has wide discretion to use a number of reasons to decide that he will not exercise that discretion. I think the opposition of the nearby tribes and their studies indicating that it would be detrimental—that it would affect their gaming revenues, is itself a reasonable factor to be used in making a section 151 determination.

Question. So it is your testimony that Secretary of the Interior Bruce Babbitt came to a conclusion that—

Answer. Oh, no, no, no.

Mr. BALLEEN. That is not what he said.

EXAMINATION BY MR. WILSON:

Question. Well, you said the Secretary.

Answer. I use "Secretary" because "Secretary" is the word that is used. So when I say "the Secretary," I don't mean the actual Secretary, I mean the Department.

Question. If you would, please give me the name of the person who came to the determination.

Answer. I came to the determination, and in—which is in the record. In my June 29, 1995, draft, I cited one of the factors as the opposition of the nearby tribes that alleged that it would have significant economic—that it would be significantly harmed by the proposed casino.

Question. So, in effect, you disagreed with Mr. Hartman's analysis?

Answer. I think that the harm that can be shown under 151 is not the same standard; it is not the same standard you apply under section 20 as under section 151. I did not rely on my draft on the detriment of the surrounding community in section 20, but I relied on the record to make a recommended finding under section 151.

Go ahead.

Question. I'm sorry, what was the harm? Because I was looking down and I missed that.

Answer. Under 151?

Question. Yes.

Answer. I think based on the record, essentially, first of all, they were opposed, basically because they said it would have a detrimental impact on their gaming operations.

Mr. BALLEEN. Can I ask a follow-up question?

Mr. WILSON. Yes, you may.

Mr. BALLEEN. The St. Croix tribe was the nearest tribe to the location?

The WITNESS. Yes, it was.

Mr. BALLEEN. And they submitted, for the record, information that led you to believe it would be a detriment to them?

The WITNESS. That is right, that they would be harmed in some fashion, but I relied on section 151 to make that determination.

Mr. BALLEEN. Thank you.

EXAMINATION BY MR. WILSON:

Question. Just to go back to that, I asked you what the harm was, and you gave me two reasons. One, the harm was that they were opposed; and, two, the harm was, they said it would have detrimental impact. So is it your representation today that the tangible harm that you perceived at the time was that they just didn't want it?

Answer. They didn't want it because of the detrimental impact it would have under gaming operations.

Question. Did you do any analyses of gaming in the area and whether it would have a detrimental analysis?

Answer. I read the record, and I read all the analysis submitted by everyone who submitted this type of documentation.

Question. And on what did you rely?

Answer. Well, on the record.

Question. Well, now, Mr. Hartman's letter is in the record?

Answer. Yes.

Question. So that is perhaps one thing you relied on; is that correct?

Answer. Yes, it is.

Question. And Mr. Hartman did not identify detrimental impact?

Answer. He analyzed their submission, and he found there would be no detriment under section 20.

Question. Correct. So one of your employees—and we are looking at the financial impact to the opposing tribes—one of your employees found there would not be a financial detrimental impact?

Answer. Well, to the extent it is listed in this June 8th memorandum.

Question. Right. But what you are saying is, you believed the opposing tribes?

Answer. I believed it showed some detriment, that there was going to be some effect from this casino.

Question. Let me just ask you a very broad hypothetical question. If you had received a letter at your time at IGMS from a tribal chairman and they said, we are opposed, this would hurt us, would you believe that, without any research?

Answer. No; I think that we would need to look at what justification you submit.

Question. Okay. Let me ask you a general question about gaming, and this is something I don't know much about and hopefully you do. What is the area in the United States that sends more per capita individuals to Las Vegas than any other area? What metropolitan area?

Answer. I don't know. I don't know.

Question. If it were the Minneapolis-St. Paul area, would that be a consideration in the Hudson Dog Track matter?

Answer. I don't see why. We certainly didn't know that at the time.

Question. Well, if you are saying—I will let that stand by itself.

Is it your representation today that you did not do any or have any of your employees do any additional research beyond that which was done by Mr. Hartman in the materials that he prepared?

Answer. I read the record myself, yes.

Question. Right.

Answer. No one else in the gaming office looked at this issue.

Question. So you disagreed with Mr. Hartman's analysis?

Answer. Well, I would have to go back and read his June 8th memorandum to see if I disagree with it or not.

Question. But he came to a conclusion—

Answer. Well, I would have to reread that to see what he says about that, and I haven't done that in a while.

Question. Please do.

Mr. HORN. Counsel, I would like to get a little more definition.

When you talk about detriment, did you look at what the casino income was of the opposed tribes or what the individual tribe or members received as a result of the casino income? And to what degree did you look at the Indian tribes themselves in their own particular benefit by individual tribe members?

The WITNESS. No; we looked at whatever they submitted. That is the only thing I can say.

Mr. HORN. What do you think a submission should be? It seems to me you have dealt with these applications over the years. And are you saying that they can just tell you anything they want and you don't check it, and you aren't concerned about the individual tribal members, or how do you go about it?

The WITNESS. I think what we look at is what they submit, and I think in this particular case they submitted evidence of detriment to their gaming operations.

Mr. HORN. Well, what kind of arguments did they use that impressed you? I mean, do they just say, hey, it is going to affect us? Any damn fool can say that.

The WITNESS. In the record, they had studies commissioned to show how it was going to affect them. I don't recall the specifics of it.

Mr. HORN. Are these studies by reputable economists that do this work, or what?

The WITNESS. I think so, yes.

Mr. HORN. And what did it tell you about the casino income, that it was going to be reduced, how much? Ten percent?

The WITNESS. I just don't recall.

Mr. HORN. 20 percent? 30 percent? 50 percent?

The WITNESS. I don't recall, I'm sorry.

Mr. HORN. Did you care at all about the impact on the tribes—

The WITNESS. Yes.

Mr. HORN [continuing]. If there was a reduction in income, and what that impact would be?

The WITNESS. No, I don't think we looked at what the impact—well, there was going to be a reduction in the revenues, and the revenues have to be used for tribal government services under the Indian Regulatory Act.

Mr. HORN. What do those opponents—we will call them that, the Minnesota tribes—what do they get annually per individual out of gaming receipts?

The WITNESS. I don't know.

Mr. HORN. You don't know?

The WITNESS. No.

Mr. HORN. And you don't care.

The WITNESS. I just don't know. You are asking me a question I cannot answer.

Mr. HORN. All I can say is, if I were a civil servant in the Department of the Interior, in the Indian affairs network, if you will, my interest would be what happens to the individual: Is this gaming doing any good for these individuals? Are they able to live a better life after being screwed around for a century or two? That is what

I would look at, and apparently you are not looking at it, you are just looking at the casino revenue, and you seem to believe anything they submitted to you.

The WITNESS. We have to go by the submissions, and we look at the economic analysis submitted.

Mr. HORN. And that economic analysis doesn't include tribal members and what they actually get out of them?

The WITNESS. I just don't remember.

Mr. HORN. You have dealt with a number of applications, what has been the routine at the Department of Interior in this. Does anybody care about the tribal members down there?

The WITNESS. Sure. But there haven't been that many applications, and certainly there aren't that many applications where tribes are opposing a casino, and that essentially is very few and far between.

Mr. HORN. Okay. Now how about the Wisconsin tribes? What do you know about them? Do you know their per capita income?

The WITNESS. No, I do not.

Mr. HORN. Well, if you heard they get \$6,000 per year capita income, and the Minnesota tribes get \$390,000 a year per capita, would that concern you?

The WITNESS. It is very hypothetical. I don't think I want to answer a hypothetical question.

Mr. HORN. That is presumably the facts. That is the information we have been given. Would that worry you?

The WITNESS. That all Wisconsin tribes receive—

Mr. HORN. The three applicant Wisconsin tribes presumably get a \$6,000 per capita income. When you look at it in an economic sense, what per capita does one group make versus the other? And if counsel has a better or more correct figure, I welcome him to put it in the discussion. My understanding, when we held this hearing a few weeks ago, was it was \$6,000 per capita Wisconsin Indians, \$390,000, \$400,000 Minnesota Indians.

Mr. WILSON. For one tribe, for one of the opponent tribes.

Mr. HORN. Okay. So would it concern you, that disparity. And how much would they have to prove to you of their detrimental effect when they have that much they can bring through in this one tribe then, per capita income? That is pretty good. Wouldn't you rather take 20,000 out of them and let the poor people with 6,000 have a higher standard of living?

The WITNESS. I think that if the only evidence in the record was that one Minnesota tribe, which has 300,000 per capita distribution, was objecting to this casino, then it certainly would be a factor, yes.

Mr. HORN. In other words, you wouldn't worry about the 300,000 per, or whatever, that Minnesota tribe had; you wouldn't worry about their particular detriment. Say they went down 20,000 in income, so it is 280, not 300; I mean, how would you deal with that?

The WITNESS. Well, I think that that would be less of a factor.

Mr. HORN. Okay. So you are saying they ruled against the Wisconsin tribes because they might impact this huge revenue coming in to one Minnesota tribe? Is that what went through the Interior's mind down there, the Secretary's mind?

The WITNESS. I don't know what went through their mind.

Mr. HORN. What went through the career staff's minds. You are supposed to be making recommendations.

The WITNESS. I don't think that the evidence pertained only to this one tribe, you know. I mean, that is why it is a hypothetical. If it was just this one tribe, it would be maybe a different story, and that is not what the record shows.

Mr. WILSON. Just for me to clarify the record, it is true that there were a number of opponent tribes to the application, and they had varying degrees of economic success from their casinos and other ventures. One of the tribes, it is indicated in a document you have in front of you and that I will soon give to you as a marked exhibit, Mr. Hartman's analysis, prepared on June 8 of 1995, does indicate that the per capita income for the Shakopee Tribe would potentially be impacted and would drop from just over \$396,000 to just over \$393,000, which brings me to a follow-up question.

EXAMINATION BY MR. WILSON:

Question. You were concerned about the assertions of the tribes that they would be economically impacted; correct?

Answer. Yes.

Question. Tell me about discussions you had with the applicant tribes to compensate the affected opponent tribes.

Answer. To compensate?

Question. Well, yes. If you are concerned that the Shakopee, for example, would drop in income from \$396,000 to \$363,000-plus—

Mr. BALLEEN. I am going to object, because he never stated that that was his concern. That is an unfair characterization.

Mr. WILSON. We will get to the end of the question, and you can answer it.

EXAMINATION BY MR. WILSON:

Question. Tell me about your conversations or discussions with the applicant tribes about the adverse economic impact to the opponent tribes and how they might be able to cure the problem that you perceived. I mean, you saw a problem here; correct? There was a problem?

Answer. That was one of the issues.

Question. It was one of the issues; it was one of the problems?

Answer. Yes.

Question. So because it was a problem and because presumably you were charged with doing what is right by Native Americans, tell me about your conversations to solve the problem.

Answer. I don't think we had conversations with the—we had conversations with the applicant tribes about this, but I think their view was that detriment to these other tribes was not relevant.

Question. Did you ever ask them to provide compensation to the opponent tribes?

Answer. No, I don't think so.

Question. Did you ever provide them an opportunity, in any way, to cure this perceived defect on your part? And we will go back to the defect itself.

Answer. I think they were provided copies of the submissions by the tribes opposing their application and were given a chance to indicate what their views on the record was.

Question. My understanding is, they were also provided copies of Mr.—this I am not sure of; I don't know this for a fact. Were they provided copies of Mr. Hartman's analysis?

Answer. No, I don't think so.

Question. Was Mr. Hartman's analysis communicated to them in any way?

Answer. I don't think so, no.

Question. Did any of the content of Mr. Hartman's analysis—was that ever communicated?

Answer. Well, if it was, he may have communicated it to them. You would have to ask him.

Mr. BALLEEN. Isn't it a fact, sir, the St. Croix Tribe is the closest to the proposed site of the Hudson Dog Track?

The WITNESS. Yes, it is.

Mr. BALLEEN. Didn't they submit a study by Coopers & Lybrand or another reputable firm that went into some detail as to how it would affect their income?

The WITNESS. Yes, they did.

Mr. BALLEEN. And their income is not \$396,000, is it, as the Shakopees is?

The WITNESS. I suppose it is not, but I haven't gone back and reread the studies in the last 3 years, so I don't know that for a fact.

Mr. BALLEEN. It is a poor tribe, the St. Croix Tribe; it is not like the Mashantucket Pequot or Shakopees that are swimming in money.

The WITNESS. I think by and large no one is like the Pequots or Shakopees.

EXAMINATION BY MR. WILSON:

Question. Mr. Ballen characterized them as a poor tribe. I would like, for clarity of the record, to try to get to an understanding if you agree with him what you characterize as a poor tribe.

Answer. Whether they are a poor tribe or not?

Question. Mr. Ballen has characterized St. Croix as a poor tribe—

Mr. BALLEEN. Excuse me; I asked him a question, I didn't characterize. I said, "Are they a poor tribe?"

The WITNESS. And I just said they are not as wealthy as the Pequots or the Shakopees, from my understanding.

EXAMINATION BY MR. WILSON:

Question. What is the average income?

Answer. I don't know.

Question. So just trying to wrap this area up, is it your testimony today that you reviewed the material submitted by the opponents and agreed with that material?

Answer. I reviewed the material submitted by the opponents, and I thought at the time that it would justify being one of the reasons under 151 for the Secretary to decide not to exercise discretion in the authority at a time to take the land into trust. That was my view at the time. I understand that you may disagree with my views at the time, and I hope that is not what this hearing is about, or this investigation is about. You know, that is the best I could do with that record at that time, and those essentially were my conclusions. Someone else may have found something different. I can't—

Question. To digress, this hearing will not be about a disagreement or a conclusion you came to, it will be about documentary evidence that contradicts what you say from, in many respects, your own documents, which will be discussed extensively at the hearings.

Did you ever communicate with Mr. Hartman about the financial impact on the other tribes?

Answer. Did I communicate with him? I am sure we did, yes.

Question. And did you tell him you disagreed with his analysis?

Answer. I didn't disagree with his analysis necessarily with respect to section 20 of the Gaming Act.

Question. Mr. Hartman testified in a deposition before this committee, and he indicated he was not certain there would even be a reduction of gaming income. He discussed synergy among gaming communities and how it often is the case that if more casinos are put into a smaller space, then the income of all of them expands. That is one thing he testified to before us.

Now I don't mean to mischaracterize what you are saying, but you disagreed with that—

Mr. BALLEN. I am going to object. If you are going to ask him about a deposition where Mr. Hartman testified, please show the witness a copy of the testimony, and myself as well.

Mr. WILSON. I will just simply make that representation.

Mr. ELLIOTT. Then I object as well. He has testified that he put his views based on the record, at the time, as he was doing his job; it was not based on unseen testimony, taken 2 and a half years later, from one of his staff.

Mr. WILSON. That is not what I am asking about. I will recharacterize the question. I am very happy to do so.

EXAMINATION BY MR. WILSON:

Question. Did you ever have a discussion with Mr. Hartman about synergies in gaming communities?

Answer. I don't recall.

Question. Did you ever have a discussion with Mr. Hartman where he expressed a view—and I am not saying he did, I am asking whether you did have a discussion where he expressed the view it is not necessarily true the addition of a casino will lead to the diminution, the lowering of income, in other surrounding communities?

Answer. No, I don't remember. We discussed the Hudson Dog Track many times. I don't recall the specific discussions.

Question. Did you ever consult any gaming experts, outside of the Department of the Interior, about whether the income would potentially be reduced by the addition of a casino at the Hudson Dog Track?

Answer. No, we didn't consult. I didn't.

Question. And this is consistent with what you said, you relied exclusively upon what was in the record?

Answer. That is right.

Question. And what was exclusively in the record is the material provided by the opponents to the dog track and Mr. Hartman's analysis?

Answer. That is right.

Mr. HORN. Excuse me. Did the Minnesota delegation make any different arguments that the three Indian tribes in Minnesota did not make? And what was your analysis?

Mr. ELLIOTT. I'm sorry, you said three Indian tribes in Minnesota?

Mr. HORN. Weren't the three Indian tribes from Minnesota?

Mr. ELLIOTT. If you are talking about the applicant tribes, they are from Wisconsin.

Mr. HORN. I am talking about the Minnesota affected tribes, and I assume—you know, we all represent people that are in our congressional districts, I don't have a problem with that, but were there any arguments the congressional delegation you met with from Minnesota made that the three opponent tribes in Minnesota did not make, or were they similar arguments?

Mr. WILSON. If I may clarify for the record, there were more than three opponent tribes from Minnesota.

Mr. HORN. Well, what is the exact number? So I can use the exact number, how many opponent tribes in Minnesota?

Mr. WILSON. I am not entirely certain. I believe it is seven.

Mr. BALLEEN. There are also opponent tribes in Wisconsin.

Mr. HORN. I understand that. That isn't where the decision was made.

What kind of arguments did the congressional delegation make to you?

The WITNESS. I have to refer to my notes again on that.

Mr. HORN. You would say your notes fully reflect the arguments they made?

The WITNESS. Well, I took notes at the meeting we had on February 8, so, to the best of my recollection, what is in the notes would be a lot better reflection of what I remembered at the time than what I may remember now.

Mr. HORN. Fine. When you left the room after hearing them, did that influence your decision, what they had to say to you?

The WITNESS. Well, at the time I left the room, I really had very little knowledge of the Hudson Dog Track application, so, you know, I don't remember.

Mr. HORN. Well, what did you do when you got back to the office?

Usually if I was in a meeting like that, I would go back and ask X, Y, and Z: Here is the argument; what do you think of it? What did you do when you left the Minnesota delegation and went back to the office?

The WITNESS. That day? I have no recollection.

Mr. HORN. That day or the next week or whenever you were in the office.

The WITNESS. Well, first I think I must have read—you know, at some point I read the record to try to familiarize myself with the issues, and I really don't remember what I did when I came back.

Mr. HORN. In other words, you hadn't read the record prior to the meeting with the Minnesota congressional delegation?

The WITNESS. That is correct.

Mr. HORN. Did you take any staff with you up there that might have read the record?

The WITNESS. No, I did not.

Mr. HORN. So you went in there alone?

The WITNESS. I went in there alone.

Mr. HORN. Or was Interior's congressional liaison with you?

The WITNESS. Oh, wait; alone from my staff. I was there with Counselor Duffy.

Mr. HORN. Okay.

The WITNESS. He was there.

Mr. HORN. Okay. Did he do most of the talking or did you?

The WITNESS. He did most of the talking.

Mr. HORN. Now, who does he represent, just to get this in the record, Counselor Duffy?

The WITNESS. He was Secretary Babbitt's counselor at that time.

Mr. HORN. So he did most of the talking, and what did he tell them? Did he tell them, we are all for you?

The WITNESS. This is where I would have to go—I think I testified, you know, in my previous deposition about this meeting, if I can refer to that.

[Witness confers with counsel.]

The WITNESS. Well, from what I recall of the meeting, they wanted him to make a decision right there and then that we were going to deny the application, and he refused to make that commitment, and from what I recall, he told them the decision would be made on the record. That was the gist of—that was the first and foremost consideration.

They then explained, they said they had not been consulted adequately under the act by the Minneapolis area director, and they asked him to give them the opportunity to submit additional comments to show their concerns, and he agreed to do that.

Mr. HORN. So you had in the room Duffy and the area director.

The WITNESS. No, the area director was not there.

Mr. HORN. He wasn't there?

The WITNESS. It was a she, but she wasn't there.

EXAMINATION BY MR. WILSON:

Question. Just trying to finally wrap up the financial issue, given that you perceived there to be a problem with the financial impact on the other tribes, did you ever tell the applicant tribes, if you don't do something about this, we will reject your application?

Answer. No, I don't think that—I don't recall any discussions with the applicant tribes at that point.

Question. Why did you not do that?

Answer. We had a number of discussions with the applicant tribes——

Question. But, to clarify——

Answer. I am not sure that we ever got into this kind of discussion.

Question. Right, but to clarify the meaning of my question, here were three poor tribes that had presented an application to the Department of the Interior, and you were making a determination as to whether to approve the application or deny the application. If you, as the director of the IGMS staff, identified a particular problem that might lead to the rejection of the application, did you consider it important to communicate that directly to the applicant tribes to give them an opportunity to cure the problem?

Answer. Good question. I don't think that I did that on this application, the first application I considered as head of the gaming office. If I were to do that again different now, you know, it might be different, it might be something I would consider doing, but at that time, I didn't do it. In other words, we did not——

Question. Has anybody from the Department of the Interior ever gone back to the tribes who spent a lot of money and a lot of time and said, we are very sorry, we will tell you what the problems are now, and if you can cure them, we will pass your application?

Answer. I don't know.

Question. Has that ever happened?

Answer. Before I was there, I have no idea.

Question. No; the Hudson Dog Track application specifically?

Answer. In doing the Hudson Dog Track application?

Question. And afterwards.

Answer. I don't know.

Question. Now I lost track——

Answer. We told the tribes that there were some—I think we had, and I don't remember the exact nature of that—I think we had discussions with the tribe on the record and on the opposition of the surrounding community, and I think we had a meeting with them where we discussed the fact that we had some serious problems with the deal that was offered by Galaxy Gaming and that substantial work would have to be done eventually on that when we get to that.

Question. Okay.

Answer. Go ahead.

Question. You mentioned that substantial work would have to be done eventually. Now were you telling them that with the view they were going to do the work after the application would be rejected?

Answer. No.

Question. Okay. Is there anything in the record that indicates in written form, or in any form, your communicating to the applicant tribes the problems that would lead to the rejection of the application?

Answer. I don't think so.

Question. Just a question about section 465. To whom does section 465 give power? I mean, for example, if there is an employee that is charged with cleaning the health equipment in the Interior gymnasium, could that employee sign a letter saying, I decline to take into trust land for the purposes of gaming?

Answer. You mean, who is the authority delegated to?

Question. Yes.

Answer. I think the authority to make determinations under 465 is delegated to the Assistant Secretary for Indian Affairs. That is my understanding.

Question. The statute delegates the authority?

Answer. No; the statute says the Secretary.

Question. Okay.

Answer. But I think the delegation of the authorities, within the Department—Mr. Elliott may know better than I do—there is a manual, a department manual on the delegations of authority, and from my understanding, that authority is delegated to the Assistant Secretary. In fact, I think that for nongaming positions, the authority to take land in trust under the Indian Reorganization Act is delegated to the area directors.

Question. So is it your view that I will find that in the statute or the regulations?

Answer. The delegation of authority?

Question. Yes.

Answer. They are not regulations, they are manuals.

Mr. WILSON. I mean, I don't want to waste time on this. I will ask Mr. Elliott right now. I will go back and do the research. Where will I find the delegation authority?

Mr. ELLIOTT. You will find them in what is called the departmental manual, down to probably as far as the Commissioner of Indian Affairs, which in this case means the deputy commissioner, and then there is a Bureau of Indian Affairs Manual, BIAM, which should have internal delegations below that level.

Mr. WILSON. So the statute gives power to the Secretary of the Interior to do something, but there is an internal communication that indicates that the Secretary need not even be aware of the issue; is that correct?

Mr. ELLIOTT. Yes, absolutely, yes. I mean, generally speaking, as a matter of government, we delegate to the lowest level of which someone feels comfortable. Some things may not be delegated, and that would be included in the statute or something delegated to the Secretary from the President, of course.

Mr. WILSON. I mean, I used to work for the Attorney General of the Department of Justice, and things were spelled out very clearly; certain people could only sign off on certain things; and maybe the statute is very imprecise.

Mr. ELLIOTT. As a general matter within the Department of the Interior, the Assistant Secretaries are delegating all the authority of the Secretary. They understand, and it is included within their responsibilities and descriptions of their office, that their authorities cover the responsibilities that they have, such as the Assistant Secretary for Indian Affairs. Whether she redelegates further is either in the departmental manuals if the Secretary has chosen to do so or she has chosen to do so.

Mr. HORN. The Office of Solicitor reviews all of those prepared delegations, do they not, that a lesser official in Interior would delegate more within? Don't they clear the Office of Solicitor?

Mr. ELLIOTT. I can't verify—I can't verify right here that below the level of Assistant Secretary or commissioner, a bureau head, that those delegations are reviewed by somebody in the offices.

Mr. HORN. I would think you would review them to see if Congress permitted further delegation. In other words, the manual—has the solicitor signed off on the manuals within Interior?

Mr. ELLIOTT. The solicitor signs off on the portions of the manual that pertain to the part of the area in which they do. If it's Bureau of Land Management, then the lawyers who service the Bureau of Land Management down at the solicitor's office do.

Mr. HORN. But they are part of the solicitor's office; right? The attorneys in Land Management or Indian Affairs.

Mr. ELLIOTT. Yes, sir.

Mr. HORN. So generally the solicitor takes responsibility for delegations, I assume, in the Department of the Interior. I mean, is it proper legally?

Mr. ELLIOTT. Fair enough.

Mr. HORN. Does Congress permit the delegation?

Mr. ELLIOTT. I'm sorry to interrupt you, Mr. Congressman. Your question was to lower level officials, and what I was telling you was, I can't verify when you get below an Assistant Secretary or bureau head, which are covered in the departmental manual.

In those delegations within the departmental manual, if something may not be delegated below the level of an Assistant Secretary or bureau head, the delegation within the manual will say this authority may not be redelegated. If it doesn't say that, it may be redelegated.

Mr. HORN. Right.

Mr. WILSON. If we could go off the record, please, for a moment.

[Discussion off the record.]

EXAMINATION BY MR. WILSON:

Question. Just finishing up with the subject we were discussing before the break. In 1995, did you think that the Hudson Dog Track application would have provided economic opportunities for the three applicant tribes?

Answer. I think if we had concluded our best interest of the tribe, the best interest of the tribe, part of the two-part determination under the Indian Gaming Regulatory Act, section 20 of the act, we would have come to a conclusion on that. But we never finalized our work on this issue.

Question. And that is because of what?

Answer. Well, because we decided to focus on the section 465, on making a determination under the discretionary authority of the Secretary and on the detriment part of section 20 before making a determination on the best interest part.

Question. First of all, who is the we that you refer to?

Answer. We meaning the Gaming Office.

Question. And specifically who was involved in the actual determination of this application?

Answer. Well, I was.

Question. Okay. Who else on your staff?

Answer. No, I made the determination alone on that.

Mr. BALLEEN. I'm sorry, I missed that. On what, sir, did you make the determination?

The WITNESS. On deciding to postpone the work on the best interest part of section 20.

Mr. BALLEEN. Thank you.

EXAMINATION BY MR. WILSON:

Question. And on that point did you consult with any of the other IGMS staff?

Answer. No. I don't recall any consultation. I may have but I don't recall it.

Question. Just to help us all differentiate between the two standards that we are discussing here, the 465 section and the detriment section, detriment part of section 20, what is the difference?

Answer. The section 20—under 465, at the time, the Secretary had broad discretion on whether to determine to take or not to take land into trust for Indians. So it was my opinion at the time that the reasons that he could rely on were not necessarily—were essentially very broad. So that in order to make a finding, a decision under 465, the only thing that has to be—the actual standard has to be met is that it doesn't amount to an actual abuse of discretion.

Under section 20 of the Indian Gaming Act, which is the two-part test that you must do once you determine that you are considering taking the land into trust under 151, the Secretary has to make a finding that, following consultation with nearby tribes and appropriate State and local officials, that a gaming establishment on the land is in the best interest of the tribe and nondetrimental to the surrounding community.

Question. Did the Secretary make that finding?

Answer. What finding?

Question. The one you just described.

Answer. The finding under?

Question. Under section 20.

Answer. On July 14. The July 14 decision reflected the Secretary did make a finding that the gaming establishment on the property would be detrimental to the surrounding community.

By the Secretary, yes, I mean whoever signed the decision. I'm sorry. I'm used to using the word Secretary in a lot of speeches I make because essentially it usually reflects, you know, the symbol for the head of the organization.

Question. Now, in your understanding of section 465, what would be abuse of discretion?

Answer. Well, that's a legal standard. I can't really respond. I don't know. Whatever a court—if a court reviews a decision of the Secretary under that standard it would find that based on the record the decision of the Secretary amounts to an abuse of discretion. Beyond that, I won't go into anything else.

Question. Right, but you were part of the decision-making process and you made a recommendation, according to your testimony, that the decision should be made under section 465.

Answer. Yes.

Question. What was your understanding at the time that you made the recommendation of what the parameters you were allowed to operate under with regard to that decision?

Answer. I think based on the record before me I looked at what we already discussed; the opposition of the nearby tribes, and I looked at the opposition of the surrounding community, I looked at the opposition of the locally elected political bodies and officials, I looked at the record of the opposition of a lot of the business community within the County of Saint Croix. I think it's Saint Croix. Croix County, whatever county it is. And at the opposition that were submitted by numerous residents and the concerns they had over the proximity of the gaming establishment to Saint Croix Scenic River Waterway.

And based on all these facts it was my determination, it was my recommendation that this was just not—I was not prepared to recommend to the Secretary, meaning whoever was making the decision, that he should exercise his discretion to take that land into trust. I believe at the time that the courts, and we were aware of only

one case at the time, the case in the 11th Circuit, essentially held that there was broad discretion of the Secretary to make that determination. That was my best guide on that.

Question. I think we discussed this before, but I had asked you earlier whether on a matter involving Indian gaming and off-reservation land being taken into trust you determined whether this had ever been done before since the enactment of IGRA, and correct me if I'm wrong, but your recollection is you did not know?

Answer. Right.

Question. Is your testimony that the opposition that you have pointed to is based on the record being substantially greater than opposition in all other cases that you handled when you were at IGMS?

Answer. Opposition? I'm sorry, I don't understand the question.

Question. For the sake of future decisions, how did you distinguish the Hudson decision from decisions that came later? Was the Hudson opposition different in some particular way to other types of opposition to gaming establishments that applications were submitted for?

Answer. I would have to look at the record, but I think at the time that I was there, there was only one other—there were section 20—we looked at some applications, and I think the opposition in the Hudson case was much more substantial in terms of numbers, in terms of the opposition of the local community.

Question. I think one thing we have established fairly clearly is that you relied exclusively on the record to make your determination; that is correct, is it not?

Answer. That's right.

Question. Did you read the record through completely?

Answer. Yes.

Question. Who was in charge of compiling the record?

Answer. In my office, I think that Mr. Hartman took responsibility, from what I recall, for keeping the record in this matter.

Question. In the record do more individuals support the proposal or do more individuals oppose the proposal?

Answer. I don't know the answer to that. I don't remember.

Question. As the decisionmaker, is that an important consideration?

Answer. The number of people?

Question. Yes.

Answer. Well, not necessarily. You would have to look at what the opposition says. I don't know. Numbers, per se, I don't think tell the whole story. So I'm not sure that's all that important.

Question. I understand your distinction. Did you ever look at the numbers?

Answer. I'm not sure we catalogued—I'm not sure I, you know, we kept a tally of people, number of people that had written opposing as to number of people who were for it.

Question. Why not?

Answer. I don't know. I think that we received—the record was voluminous, and there were petitions that were sent that had hundreds, perhaps thousands of signatures on each side. So we knew that there was substantial opposition as well as some who were in favor of it. But I don't recall the numbers, no.

Question. That information was put into the record; correct?

Answer. Yes. Whatever was received was put into the record.

Mr. BALLEEN. Excuse me. Mr. Wilson keeps asking about a record. Was there a formal record in this case that is maintained, as in the Administrative Procedures Act?

The WITNESS. No.

Mr. BALLEEN. Or was it an informal—

The WITNESS. It was informal at that time.

Mr. BALLEEN. Wasn't it compiled after the fact?

The WITNESS. Well, that's right. The record was compiled when the litigation was started. So I guess we put in that record all the information that we relied on and that was received at the time. That's what I mean by the record.

Mr. BALLEEN. But there is no formal record established during this—

The WITNESS. No, no.

Mr. BALLEEN. That was being detailed in that sense?

The WITNESS. Well, we keep the files. It's just standard operating procedure.

Mr. BALLEEN. Were you required to keep a record?

The WITNESS. Required?

Mr. BALLEEN. Yes, under law.

The WITNESS. I don't know. I mean we keep a file on the—I don't know if we are or not. We keep a file—

Mr. BALLEEN. This case is not governed by the Administrative Procedures Act or certain rulemaking authorities of the United States which require a formal record?
The WITNESS. No, no, no. Nothing like that, no.

EXAMINATION BY MR. WILSON:

Question. But at this point, the record that we are referring to as the record is what you have presented to the court in the civil litigation for them to make a determination, as you mentioned, as to standard, arbitrary, capricious?

Answer. No, abuse of discretion.

Question. I apologize, abuse of discretion. That is what you presented to them for them to make a determination; correct?

Answer. That's right.

Question. And is it your view that that record should be a complete reflection of the support and opposition to the Hudson Dog Track proposal?

Answer. Yes, it should be whatever was received. I hope that's what it is.

Question. And is it?

Answer. I hope so.

Question. And who compiled it?

Answer. I think Tom Hartman on my staff and maybe others. For litigation, you mean.

Question. (Nodding in the affirmative.)

Answer. Put together a record and attorneys who worked in the Solicitor's Office.

Question. Have you reviewed that?

Answer. Reviewed the record?

Question. Yes.

Answer. Yes. I mean this was a voluminous record. We're talking 14 volumes here.

Question. I read every page of each of the 14 volumes.

Answer. What?

Question. I looked at every page of each of the 14 volumes, so I understand exactly how voluminous it is.

You have indicated that you were the principal decisionmaker in the IGMS office and you have indicated that you reviewed the 14-volume record; is that correct?

Answer. Yes.

Question. And based on your familiarity with this case, your involvement with this case, did you notice any gaps in the record?

Answer. No.

Question. Who would be most familiar with the record at the Department of the Interior?

Answer. Mr. Hartman and the attorneys—well, if you are talking about the litigation, the record for the litigation.

Question. The 14 volumes you have identified.

Answer. Right. It would be Mr. Hartman in the Indian Gaming Office.

Question. Would you consider it an attempt to mislead Congress if information indicating support for the Hudson Dog Track application was left out of that record?

Mr. BALLEEN. I'm sorry, could you repeat the question? I didn't hear it.

EXAMINATION BY MR. WILSON:

Question. Would you consider it an attempt to mislead Congress if information indicating support was left out of the record?

Mr. ELLIOTT. I'm going to object to that question unless you can show him that there's such information. He has testified the administrative record was not compiled for purposes of transmission to the Congress.

The WITNESS. Right. I had nothing to do with transmission of whatever was sent to Congress.

EXAMINATION BY MR. WILSON:

Question. Would you consider it an attempt to mislead the court with jurisdiction over the civil litigation if information indicating support for the application had been left out of the 14-volume record presented to the court?

Answer. If something—

Mr. ELLIOTT. Again, you have to show him the information. He said what went into the record is information that was received. If that is what you are talking about, then you need to show him those documents. If you are talking about internal documents, judgments have to be made as to what goes in that record. It is not a formal administrative record, as Mr. Ballen points out, under the Administrative

Procedures Act, where there are guidelines as to what actually appears in the record.

EXAMINATION BY MR. WILSON:

Question. I will give you a clear example. A page of petition signatures indicating support for the application were not included in the record presented to the court with jurisdiction over the civil litigation. Would you consider that an attempt to mislead that court?

Answer. Only if it was intentionally left out. If the staff unintentionally left it out, then it would not be an attempt to mislead the court.

Mr. WILSON. I have provided Mr. Skibine with a document that has been marked for the purpose of the record as exhibit GTS-6, and it is—

Mr. ELLIOTT. Is there a 5? Oh, this.

Mr. WILSON. This is a document dated July 14, 1995, addressed to Rose Gurnoe, Alfred Trepania, Arlyn Ackley, and it is signed by Michael J. Anderson.

[Skibine Deposition Exhibit No. GTS-6 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. It is my representation this is the document that officially rejects the Hudson Dog Track application. Was it your recommendation that a section 20 analysis should be included in this document?

Answer. No, it was not.

Question. Whose recommendation was it?

Answer. Offhand, I don't recall. I think it was made by someone up the chain of command. But as I recall from looking at some of the documentation, it was a recommendation that was made by Mr. Duffy.

Mr. BALLE. May I ask a follow-up question? What recommendation are you talking about?

The WITNESS. The recommendation to include section 20 analysis in the final letter.

EXAMINATION BY MR. WILSON:

Question. Did you ever have a discussion with Mr. Anderson about whether a section 20 analysis should be included in this letter?

Answer. I may have.

Question. Do you recall any such conversation?

Answer. Specifically? No, not specifically. But I think it would have made sense to have that, so I assume we did.

Question. Is it your recollection that only Mr. Duffy, to the extent you have a clear recollection on this, only Mr. Duffy was in favor of inserting a section 20 analysis into this letter?

Answer. No, it's not my recollection that he may have been the only one. You would have to question the other individuals who reviewed the draft that I submitted on June 29th and why they made those modifications.

Question. Do you have a recollection of anybody else suggesting that a section 20 analysis should be included in the July 14 letter?

Answer. Not specifically.

Question. Did you ever have meetings or communications with individuals at the Department of the Interior in which you communicated your belief that a section 20 analysis should not be included in the rejection letter?

Answer. Before June 29th?

Question. Before the letter was actually published.

Answer. Yes, I probably did.

Question. And with whom did you have such discussions or communications?

Answer. Well, I think I had communications with Kevin Meisner and Troy Woodward, two attorneys who worked in the Solicitor's Office. I may have discussed this with Mr. Duffy and Heather Sibbison, his assistant; with Michael Anderson; and with my boss, Hilda Manuel.

Question. And did Mr. Meisner disagree with your analysis that a section 20 rationale should not be included in the rejection?

Answer. No, he did not.

Question. Did Mr. Woodward disagree with your rationale?

Answer. I don't think he did either.

Question. Did Ms. Manuel disagree with your analysis?

Answer. I don't remember exactly. I knew you were going to get to that, and I really don't recall. I know she was my boss, so I kept her apprised of everything

that was going on, but I really don't recall, and I know that's maybe strange, but exactly what her position was on that.

Question. Did Mr. Anderson indicate that he disagreed with your analysis?

Answer. Well, he must have disagreed since he signed the letter, the July 14th letter. You would have to ask him specifically about that.

Mr. BALLEEN. Do you recall one way or the other?

The WITNESS. Not really.

EXAMINATION BY MR. WILSON:

Question. Did Ms. Sibbison agree or disagree with your analysis that section 20 rationale should not be included in the rejection letter?

Answer. I think she disagreed, from what I recall. You would really have to ask her that, too.

Question. And why did she disagree?

Answer. I think she—I don't remember that.

Question. And it is fair to say that Mr. Duffy disagreed?

Answer. Yes.

Question. Now, the materials that were submitted in order for you to come to a conclusion, where were they kept?

Answer. In the Gaming Office.

Question. And that's in your office?

Answer. Yes.

Question. Your, meaning not necessarily the literal place where you sit but in the IGMS office?

Answer. That's right.

Question. And literally where were they kept?

Answer. I think they were kept in Mr. Hartman's office, from what I recall, at the time. It's hard to say exactly which room they were in, frankly.

Question. Are you aware, and I will give you the list and you can pull a name out, are you aware of Mr. Meisner, Mr. Woodward, Mr. Duffy, Ms. Sibbison, Mr. Anderson, Ms. Manuel, or Mr. Collier ever going to where the materials were and reviewing those materials?

Answer. I don't have any specific recollection of that, although they can go into the Gaming Office without coming through my office. So that doesn't say that they didn't do it, I just don't have any recollection of it.

Question. Did you have any discussions with any of those individuals about whether they had conducted an independent review of the materials that had been amassed in support and opposition to this application?

Answer. I'm sorry, can you repeat the question?

Question. Did you have any communications with any of the individuals, Mr. Meisner, Mr. Woodward, Mr. Duffy, Ms. Sibbison, Mr. Anderson, Ms. Manuel, or Mr. Collier, as to whether they reviewed materials collected in support or opposition of the application?

Answer. No.

Question. Did you provide to any of those individuals analyses about what the material said?

Answer. No. There was—the only—well, in the record there were documentation—I don't know how much they got. I think the Hartman memo of June 8th was available. My environmentalist also did a review of the documents. And there were preliminary drafts done in January before I became the director that were also in the record.

Question. Was Mr. Hartman's memo circulated amongst the people that I mentioned earlier, and those people are Meisner, Woodward, Duffy, Sibbison, Anderson, Manuel, Collier?

Answer. Collier? No, I think he was gone from the department at the time. I think that it was available, and I think it was, I indicated to people that it was available for their review.

Question. And just to recapitulate, you don't have any knowledge of whether they actually did review the materials or not?

Answer. No.

Question. Did you state your position that a section 20 analysis was not appropriate for insertion into this rejection letter?

Answer. I think I did. In my June 29th I don't rely on section 20.

Question. But in conversations or communications with anybody at the Department of Interior, did you communicate that you thought that section 20 was not a valid rationale for the rejection of this application?

Answer. I cannot recall specifically, but I think I did.

Question. As the head of the IGMS office, was it your duty to provide advice?

Mr. ELLIOTT. Excuse me a minute, Mr. Wilson.

[Mr. Elliott conferring with witness.]

The WITNESS. Counselor points out that, which is true, that we never completed the section 20, the whole section 20, two-part determination. So if you are—so we couldn't have relied on it unless the two-part test was completed. It was my position that it was unnecessary to rely on section 20.

But, you know, in my June 29th, essentially that's what I say. And I chose not to, I chose not to rely on that.

EXAMINATION BY MR. WILSON:

Question. Given the potential presidential value of a determination over one standard or another standard, did you consider at the time that it was important to accurately state the position of the Department of the Interior in the rejection letter?

Answer. Yes, of course.

Question. Do you consider this an accurate depiction of the position of the Department of the Interior?

Answer. My June 29th draft?

Question. No, the July 14 rejection.

Answer. Well, it's the decision of the Deputy Assistant Secretary. I guess I don't understand what your—

Question. Is it accurately conveyed?

Answer. Accurately conveyed?

Question. Yes.

Answer. I don't understand.

Question. Does this convey your understanding of the law and the facts as they are applied to this case?

Answer. It conveys the understanding of the Deputy Assistant Secretary as the representative of the department.

Question. And you communicated to him your thought that the rationale for rejection should not include section 20; correct?

Answer. That's right.

Question. Do you know where he got information that led him to decide that section 20 analysis was appropriate?

Answer. You would have to ask the individuals who are mentioned why they decided to include section 20. I don't know.

Question. For the purposes of trying to get a very clear statement for our hearings next week, is it correct, then, to say that you did not support a rejection of this application on section 20 grounds?

Answer. That's correct.

Mr. BALLEEN. But you did support a rejection of the application?

The WITNESS. On 151.

Mr. BALLEEN. But you supported—you disagree with the result in this letter.

The WITNESS. The ultimate result?

Mr. BALLEEN. Yes.

The WITNESS. No. I agreed that it was my recommendation of June 29th that the land not be taken into trust. But I agreed that I did not, with counsel, that I did not support including section 20 as part of the reason for denial of the acquisition.

EXAMINATION BY MR. WILSON:

Question. Was there a section 20 finding that the application, the result of the application would be detrimental to the surrounding community?

Answer. Only in the letter.

Question. But nowhere outside of the letter?

Answer. No.

Question. So it would be incorrect for anybody to represent that this decision was made based on a finding in the record that there was detriment to the surrounding community under the section 20 standard; is that correct?

Answer. No, that is not correct, if I understand you right. I think that the decisionmakers found that the information in the record was sufficient to say that there is detriment to the surrounding community under section 20.

Question. Under section 20?

Answer. Right. That's what they decided to do.

Question. And given that definition of what happened, who were those decision-makers?

Answer. Well, I think that I answered that question already, but, you know, frankly—so do I need to answer it again?

Question. No.

Answer. I want to point out something, that after I drafted my June 29th recommendation I went on vacation. I was gone for a week, I believe. I came back on a Saturday and then I left again on Sunday for Denver for a meeting. At the time I was on a negotiated rulemaking committee which took a lot of my time. And I was there until the 13th and I came back on the 14th.

So whatever meetings occurred and discussions occurred during that time, which is crucial in this case, I did not participate in.

Mr. HORN. How about telephone calls with people that were in those discussions?

The WITNESS. No, I didn't have any. The only thing I did was I did discuss the draft with Michael Anderson because he and I were both in Denver the second week of July.

Mr. HORN. That includes faxes, any form of communication besides telephones? You didn't use fax or review drafts?

The WITNESS. There was a new draft that was faxed to us in Denver, and I think we had a discussion on that draft, me and him.

Mr. HORN. How much did you interlineate the draft and make changes at all?

The WITNESS. Did we make changes to the draft?

Mr. HORN. Yes.

The WITNESS. Well, he made changes to the draft, Mr. Anderson, and he asked for my technical advice on some issues. That's all.

Mr. HORN. What sort of technical advice was he seeking?

The WITNESS. Well, I don't recall exactly. He asked me a variety of questions on the opposing tribes, I remember. Beyond that I just simply do not recollect. I think we had various—he had specific concerns in the draft and he wanted those addressed. You would have to ask him.

Mr. BALLEEN. You don't have an independent recollection is what you are saying?

The WITNESS. No.

Mr. BALLEEN. But you did have discussions with him?

The WITNESS. Yes. With him, yes.

EXAMINATION BY MR. WILSON:

Question. What is your understanding of who actually drafted the letter, given both yourself and Mr. Anderson were in Colorado?

Answer. The original draft of June 29th was mine. After that, several individuals made changes. I think that when I came back from Denver, I think there were E-mails that were discovered that came into the committee after my first deposition that indicated that I came into the office on Saturday and found some changes made by Heather Sibbison and John Duffy, recommended changes which I ministerially included in the new draft and then left for my secretary to distribute. And beyond that there may have been others, and I do not know.

Question. Just returning for a moment to a letter that we were examining at the beginning of the deposition, the letter from Secretary Babbitt to The New York Times, there was a statement in this letter that says this department does not force off-reservation casinos upon unwilling communities.

When you were the head of the IGMS staff, was it the Department of the Interior's policy that any opposition to an off-reservation casino was sufficient to cause an application for that casino to be rejected?

Answer. At the time of the Hudson Dog Track?

Question. At the time you were at the IGMS office.

Answer. During those three years?

Question. Yes.

Answer. It was never a written policy. We looked at each application on a case-by-case basis and evaluated it based on the merits of the application. We looked at whether the objections were valid and things of this nature.

Question. Now, given the section 20 provides a written standard, did you have any other written standards that you relied upon?

Answer. I'm sorry, I don't understand.

Question. The section 20 analysis is a written standard that you can follow and ultimately make a determination based on that written standard about whether to accept or reject an application for off-reservation gaming.

Answer. Right.

Question. Did you have any other standards that were written down that would allow you to make a determination as to whether you would accept or reject an off-reservation gaming proposal?

Answer. We looked at the regulation in 25 CFR 151 to make a determination on whether to take the land into trust under the Indian Reorganization Act.

Question. But it's my understanding that section 20 provides a specific two-prong test.

Answer. Right.

Question. Section 151 just is a discretionary standard?

Answer. That's right.

Question. So there is no actual standard. It's just a discretionary determination as to whether it's—?

Answer. At the time of the Hudson decision it was my understanding that 151 was, it was a very broad discretion. After that, I think that the United States has been involved in litigation in the State of South Dakota v. United States Department of the Interior, where at issue was whether the Indian Reorganization Act is an unconstitutional delegation of legislative authority based on the failure to have standards.

The Department has then taken the position that the 151 includes objective standards, and I think the Supreme Court vacated the decision of the 8th Circuit in that case based on the briefs filed by the Department of Justice in this case.

So now, if we look at 151, I think we would look at it a little differently than what I did at the time of Hudson.

Question. So section 20 provides a standard for you to operate under?

Answer. Yes, right.

Question. And by deciding not to make a section 20 analysis and going to section 151, you are going to a standardless decision-making process. Why reject the standard in the Hudson Dog Track issue?

Answer. Why did it decide not to use section 20?

Question. Why, to your knowledge, did the Department of the Interior decide to reject making a decision under the section 20 standard?

Answer. It was the opposite.

Mr. ELLIOTT. That is not the case.

The WITNESS. The opposite. I decided not to use section 20. The Department decided to rely on section 20.

EXAMINATION BY MR. WILSON:

Question. And one of the things we have gone back and forth on this is we are looking for an example in the record of somebody stating that there was no detriment or there was detriment to the surrounding community, and we have many indications from individuals that that standard could not be met; that the Department of Interior could not establish that there was no detriment to the surrounding community.

Answer. Well, you have the June 8th memo essentially, yes. That was the conclusion of Mr. Hartman in that memo.

Question. Is it your belief that that is the only representation in the record or any materials that you have seen that says that the Department of the Interior is not able to make the determination that there is no detriment to the surrounding community—that there is detriment to the surrounding community?

Answer. The Hartman memo?

Question. (Nodding in the affirmative.)

Answer. Yes.

Question. That's the sole example of somebody saying we are not able to establish on the record detriment to the surrounding community?

Answer. That's correct. Now, there is an unsigned draft, which is a transposition of the Hartman memo, but essentially that's his position and it is essentially the same document.

Now, can we go off the record a second?

Mr. WILSON. Yes, let's go off the record a second.

[Brief recess.]

Mr. WILSON. Back on the record.

The WITNESS. Let me clarify one thing. There is, of course, the representation of the Area Director. I was talking that essentially concludes that the gaming establishment is in the best interest of the tribe and not detrimental to surrounding community under section 20. I was only focusing on central office activity. So that needs to be reflected. That's in the record for sure.

EXAMINATION BY MR. WILSON:

Question. But your understanding that amongst the central office personnel, nobody indicated that the Department was unable, on the record, to determine that there was a detriment to the community?

Answer. In my staff?

Question. In your staff.

Answer. No. That's correct.

Mr. BALLEEN. Can I follow up on that?

Mr. WILSON. Yes.

Mr. BALLEEN. I'm not sure I understand. What do you understand the question to be and what's your answer?

The WITNESS. I think he asked whether there is any evidence in the record that in the IGMS staff anyone looked at the two-part—the detriment to the surrounding community and found that there could be, we could say that there was detriment to the surrounding community.

Well, there is my environmentalist, Ned Slagle, I think, was of the view that the requirements of the National Environmental Policy Act, NEPA, were not satisfied. I think that essentially would go to the detriment.

In other words, it would be hard to find that there is no detriment if there was not adamant compliance. So let me clarify that to this extent.

Mr. BALLEEN. And wasn't there also in the record and amongst the materials that you considered the fact of local opposition to the casino from the surrounding communities?

The WITNESS. Of course, but that is not the question that he has asked. The question he asked is whether anyone on my staff wrote a document.

Mr. BALLEEN. Right, I'm asking a different question, which was——

The WITNESS. Okay.

Mr. BALLEEN. Did your staff discuss other evidence in terms of any detriment to the community as reflected by local opposition or increased services to the community or the other concerns that were brought forward?

The WITNESS. Yes, there was certainly evidence of that in the record.

Mr. BALLEEN. Was that discussed among the staff?

The WITNESS. Yes.

EXAMINATION BY MR. WILSON:

Question. As Director of IGMS, with the responsibility for helping to make sure this process worked fairly to all participants in the process, people in the community, applicants, anybody involved or interested in the process, what standard do you think the applicants were trying to satisfy?

Let me try to ask a very general question. There is an application process to take land into trust, off-reservation land into trust for gaming purposes, and in laymen's terms it presents a number of hoops that have to be jumped through.

Answer. Uh-huh.

Question. One particular hoop is the section 20 analysis of IGRA.

Answer. Uh-huh.

Question. Is it your understanding, from conversations with the applicants, that that's what they were trying to satisfy to get their application passed?

Answer. I think they were trying to satisfy all the requirements. They were trying to satisfy the requirements of 151, they were trying to satisfy the requirements of IGRA, and they were trying to satisfy the requirements of NEPA and whatever.

Question. Right, but I mean the section 151, there is no articulated standard. It's a discretionary thing of the Secretary of the Department of the Interior or the decisionmaker of the Department of the Interior.

So if you are saying that the applicants are trying to satisfy the provisions of section 151, unless you tell them what the conversations are, the concerns are, they don't know what they are supposed to do; is that correct?

Answer. They have the regulations in 151, and that's essentially what they go by.

Question. In terms of the articulated detriment to the community standard, whether the application——

Answer. Under section 20.

Question [continuing]. Under section 20 would or would not be a detriment to the community, were you aware of any discussions with applicants that identified or articulated the ultimate concerns of the Department of the Interior with their application?

Answer. We had several discussions with the applicant tribes. I don't recall the specific nature of their, of the discussions, but I think it did relate to the issues that were before the Department, including the opposition of the local community, the

opposition of the nearby tribes, and also whether the application was in the best interest of the tribe.

Question. And I will move away from this because we will come back at the very end, and you have been very clear on this before, who at the Department of the Interior was responsible for a determination as to whether the opposition to the application was valid opposition?

We discussed before the issue of tribal income and other tribes saying we might lose some income so we're opposed to the application. Who was it on your staff and at the Department of the Interior that ultimately had responsibility for deciding whether the opposition was valid?

Mr. ELLIOTT. Counsel, could you clarify what you mean by valid?

EXAMINATION BY MR. WILSON:

Question. Well, significant enough or well-founded enough for you to say in a rejection letter, or part of the decision-making process, this has been communicated to us, that makes sense, and for this reason we will reject the application.

Answer. Michael Anderson signed the letter in this particular case, was my superior, who was the ultimate, and charged with the final decision-making authority.

Question. Who advised Michael Anderson? Who was responsible for—

Answer. Well, there were a number of people involved. I was one of them. The Solicitor's Office was involved. As I said before, Troy Woodward and Kevin Meisner, Bob Anderson was the Associate Solicitor for Indian Affairs, John Duffy was Counselor to the Secretary and was the point man on gaming, and Heather Sibbison was a Special Assistant, and you could also get advice from Hilda Manuel, the Deputy Commissioner, who was my supervisor, my direct supervisor.

Question. Going back to the issue we discussed before of tribal income, what was your advice to Mr. Anderson on that point?

Answer. On tribal income?

Question. Right.

Answer. What do you mean by tribal income?

Question. Well, opposition from other tribes. What did you tell Mr. Anderson about that opposition?

Answer. Well, what I told is what's in the, in my letter at the time. I thought that the opposition of Indian tribes, nearby Indian tribes, and the potential impact on their gaming operations was a ground that could be relied on to make a finding, one of the grounds, not to take the land into trust, taken together with the other reasons not to take the land into trust under section 151.

Question. Did you tell Mr. Anderson that that opposition was well-founded?

Answer. It's based on what's in the record.

Question. Well, go back to the question. Did you tell him that that opposition was well-founded?

Answer. Well, I'm not sure that I specifically used those words.

Question. You have testified before you agreed with the—

Answer. Well, based on what they had and the record that they submitted, you know, we did look beyond—I did look beyond really the economic analysis that they furnished.

Mr. WILSON. I have provided Mr. Skibine with a document that has been marked for the record GTS-7, and I wanted to turn to one very specific section in this document, if I may. Specifically, page 4 of this document discusses an example of opposition, one example of opposition to the Hudson Dog Track proposal, and it is under a section that's marked A, consultation with State.

It discusses a letter that a Ms. Sheila Harsdorf, State Representative, and 28 other representatives and State senators sent to the Secretary. The letter, as outlined here, was dated March 28, 1995, expressing strong opposition to the expansion of off reservation casino style gambling.

I wanted to talk about some of the specific things that are discussed in this memo. It's marked draft memorandum.

[Skibine Deposition Exhibit No. GTS-7 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. The letter, as recited in this memo, identifies four potentially detrimental impacts, and the first one discusses the removal of land from local property tax rolls. I would just like your understanding of what the provisions for removing land from tax rolls were in the Hudson Dog Track application as it came to you in 1995?

Answer. I'm sorry, I'm failing to follow.

Question. This section talks about there will be a detriment because local property will be removed from the tax rolls. And if the property is removed from the tax rolls, there will be no taxation paid on the property.

Answer. Yes.

Question. Okay. And this is a reason to oppose the Hudson Dog Track application.

Answer. Okay.

Question. What is your understanding of the provisions for the applicants to pay taxes or to compensate the community for land being taken off the tax rolls?

Answer. I guess—what are you asking, exactly?

Question. Does this identify a detriment?

Answer. Oh. Which paragraph?

Question. The first. The one that's marked first.

Answer. Where are we?

Question. I'm sorry, on page 4, the very last paragraph that begins "first".

Answer. First, the signatories cite the removal of land from the local public tax rolls. MAO cites agreement government services as evidence that the detrimental impact of placing land in trust has been mitigated. The applicant tribes assert that the track would close if it is not purchased by Indians, and all revenue to the local governments will cease, a potential detrimental effect of not acquiring the land in trust.

Okay.

Question. Is this a detriment?

Answer. To remove the land from the tax rolls?

Question. Yes.

Answer. Yes. It means that there is no taxation coming in because once the land is placed into trust, there is no more—it ceases to be subject to State taxation.

Question. Now, if you received a letter like this from somebody saying this is what's going to happen, and let's specifically talk about this, because this is a concerned person writing in about this particular application we are discussing, did you do any further research?

Mr. BALLEEN. Excuse me, I want to correct the record. This is not just a concerned person, it's the state assembly person for that area. So it's a local representative in Wisconsin for that area.

The WITNESS. Right. Did we what?

EXAMINATION BY MR. WILSON:

Question. Did you do any additional research to determine whether this is a correct representation or an incorrect representation?

Answer. We didn't do any further research.

Question. So this is correct, there would be no taxation or no compensation for the land taken off the tax rolls?

Answer. Well, there would be—I think that the tribe entered into an agreement with the county for payment of certain services.

Question. And—

Answer. That's in the record.

Question. Right.

Mr. BALLEEN. Isn't it a fact if land is taken into trust it's taken off the tax rolls?

The WITNESS. Yes, it is.

Mr. HORN. Did you have a chance to take a look at any other taxes that may be paid the State of Wisconsin; special districts, cities, local districts?

The WITNESS. I don't know.

Mr. HORN. Did your office ever look into that?

The WITNESS. I don't think so.

Mr. HORN. If these lands are taken off the tax rolls, that's a legitimate claim that seems to be something you might want to look into. Here you have 28 representatives and a State senator that are objecting to that. But then you could weigh the economic impact.

I would think you would want to see, in lieu of that, is there another tax or some sort of payment of fees that would bring up a great deal of revenue. Here is a dog track sitting there, and I take it the dog track paid land taxes, did they, for the county and State?

The WITNESS. I assume that they did, yes.

Mr. HORN. Yes. So if this is a substitute for that, you might want to weigh what other taxes would be due the State and its entities beneath the State. But I take it you didn't do it?

The WITNESS. We—I did not look beyond what was in the record.

Mr. HORN. In other words, the record would influence you, yet your staff, neither your staff nor you would be critical of the document? You just take it at face value? That seems sort of shocking to me.

The WITNESS. If we were going to make a finding of detriment under section 20, I think we would have to look at this issue very carefully. Certainly that's what Hartman did. But I didn't rely on section 20.

I think under the discretionary authority in the IRA, I think that the opposition and the reasons given, and that is not one of the reasons I cite in my draft, by the way, were I think sufficient for us to find that we just didn't want to take the land into trust at this point. It's a different standard, and that's precisely why I had some reservations, or one of the reasons I had some reservations in using section 20.

I think that the concerns raised by Mr. Hartman in his June 8th memo raised some questions about the appropriateness of using section 20, and that was one of the reasons that I chose for me to decide that I would not recommend using section 20. But I think under the discretionary authority of the Secretary, I think you can rely, or whatever has the designated authority, on much less than what would be, in my mind, what was in my mind required under section 20.

EXAMINATION BY MR. WILSON:

Question. I want to continue on this, but I don't want to be mysterious here. I'm trying to determine whether one has to have reasons for opposition to any application; whether the raw opposition is enough or whether they are actually required to have reasons for—

Answer. Under section 20?

Question. No, I will actually take any section. Because if you take section 151 and you say under 151 it's enough for us to look at community opposition to reject an application, I still want to know whether there have to be reasons for that opposition. Is it just enough for—

Let me give you a very specific example. If the town of Hudson were overwhelmingly—or say 51 to 49 percent against a dog track because they didn't want Native Americans anywhere near their towns in a business enterprise, is that the type of consideration that you would have said that's a valid consideration under 151 and we will reject the application?

Answer. But I don't think we would have said that.

Question. Well, that's my point. Is it or is it not a valid—

Answer. No. Someone says they don't like Indians would not be a valid reason.

Question. So we want to figure this out, and there's a lot of dancing around the issue here, but we read in the press, we see in documents that the Department of the Interior rejected an application for taking land into trust for gaming purposes because of community opposition. And so if you stop right there, we have not determined whether anybody is ever supposed to go and look at the community opposition and determine whether it's valid opposition or not, and this is what I'm trying to get at here.

Let me give you briefly a document that has been marked for the record GTS-8.

[Skebina Deposition Exhibit No. GTS-8 was marked for identification.]

It is a page from the testimony of Hilda Manuel, and I have highlighted the relevant sections there.

Mr. BALLEEN. Mr. Wilson, where is this document from, please?

Mr. WILSON. This is from the deposition of Hilda Manuel, Department of Interior employee.

Mr. BALLEEN. What deposition, I'm sorry?

Mr. WILSON. The deposition of Hilda Manuel.

Mr. BALLEEN. By the House?

Mr. WILSON. By the House of Representatives, yes.

Mr. BALLEEN. This committee?

Mr. WILSON. This committee, yes. And about halfway down the first box in the top left corner, the question is asked: Is it the Department of Interior policy that any opposition to an off-reservation casino is sufficient to cause an application to be rejected? And after a great deal of squabbling, the witness answers yes.

The WITNESS. Okay.

EXAMINATION BY MR. WILSON:

Question. And then there is a qualification in the section marked on your document in the bottom left-hand box, Ms. Manuel says, "I qualify that by saying, how-

ever, that the community has to have a reason for not wanting it there." And she continues on by saying it can't be just because they don't like Indians, for example.

Now with that in mind, is that an accurate portrayal of Department of the Interior policy?

Answer. Under 151?

Question. Under any standard that could possibly be used to determine if land should be taken into trust for off-reservation gaming purposes?

Answer. Yes, there has to be a reason, as she says, yes.

Question. So returning back to the points we were talking about in the Harsdorf letter. For example, the point is made in this letter that property will be taken off the tax rolls, and there is the suggestion that that will reduce revenue taxation purposes.

Would it make a difference to you if—and you mentioned that there was an accommodation made to solve this problem by the applicants—they were to make a payment to compensate the community for the land being taken off the tax rolls? Does that make a difference?

Answer. I think it makes a difference.

Question. Okay. And if, for example, the applicants were to provide more compensation than the tax rolls actually gained from taxation on that property, would that be an adequate remedy for the problem that is perceived here?

Answer. Yes, provided that the additional cost that is incurred by the local community is more than compensated by that payment.

Question. Right.

Answer. In other words, if they are just compensating for, you know, increased law enforcement services and fire protection services—

Question. I understand, but this is about tax; this is about removal of land from the local property tax rolls; this does not say in this section, we have a concern over increased police costs or brightness of lights or noise or anything else.

Answer. The point I am making is that if there were a payment made by the tribe that were to go to payment of each additional cost that would be incurred by the city for police protection and whatever are paid, then the fact that this is taking up the tax roll doesn't necessarily cover that.

Question. I understand that. But let's focus on this. With you as a decision maker, if you had received a letter from an individual and it said—whether they are a State Senator, Federal Senator, concerned citizen, anybody, it doesn't matter necessarily who they are, people have concerns, and they should be addressed. Here is a concern, a valid and legitimate concern that somebody has identified, and if you received a letter like this that said, I have a concern about land being taken off the tax rolls, and you knew for a fact that there was adequate compensation for the loss of that tax revenue, would you still say, this opposition is enough to cause me to reject the application?

Answer. No; I think that it would be a factor, it would be one of the factors.

Question. I am wondering why it would be a factor.

Answer. What I am saying is, it would be one of the factors that I would take into consideration if I knew there was compensation in determining whether this is a valid objection.

Question. And, consequently—I mean, I don't quite understand the answer then. If you knew for a fact that the applicants had made a legitimate accommodation to address this concern and it satisfied you, would you say, I am going to reject the application because of the opposition? I mean, there is opposition identified, and it is not going away. The fact is, it may be correct or incorrect, and my question to you is, did you consider it part of your job to determine whether points made in opposition were correct or incorrect?

Answer. Yes, we looked at that.

Question. Now, as you sit here today, do you know for a fact whether this concern was adequately addressed?

Answer. I cannot recall right off the bat.

Question. The answer is, you do not know if this was ever addressed?

Answer. No.

Mr. BALLEEN. Was this the only concern raised in terms of local opposition to the proposed casino, the removal of the land from the local tax rolls?

The WITNESS. No, it wasn't.

EXAMINATION BY MR. WILSON:

Question. I would just like to work through this one more time and get as far as we can with that.

Now there is a second reason that is identified in this letter, number 4, and we will do each one in turn. It states in the memorandum we are looking at, the representatives assert that expansion of gambling is contrary to public will in Wisconsin. Would that, by itself, be a valid reason to reject the application?

Answer. Not to take it into trust, yes, it would be a factor.

Question. So the fact that people don't like gambling is, by itself, a reason?

Answer. It is under 151. I think that there is no obligation on the Secretary to take off-reservation land in trust. This is just an exercise of discretion. That is what I believed at the time, and based on the record and based on the position from State elected officials from the towns and nearby communities, I felt that that was enough reason—that that position was enough reason to decide that it was just not the time or the place to take this land into trust for gaming under 151.

Question. Well, we will go away from these reasons. If you can then encapsulate all the reasons, then, that you thought spoke to rejecting the application?

Answer. Well, I think that I would have to refer to my June 29 memo, and what I said is, "25 CFR Section 151.10 sets forth factors to be considered when the Secretary is acting on a request for acquisition of land in trust status, although the regulation does not purport to constrain the Secretary's discretion to consider other factors, nor assign different weight to each factor."

"One of the factors listed is the purpose for which the land will be used. The purpose of the acquisition is to enhance class III gaming at the facility with the introduction of slot machines and blackjack along with the pari-mutuel dog racing currently being conducted on the site by the owners of St. Croix Meadows Greyhound Park, Croixland Properties. For the following reasons, we are not prepared to take this off-reservation parcel into trust for gaming purposes at this time.

"The parcel of land is located off-reservation, in Hudson, Wisconsin. The record before us indicates that the surrounding communities have strongly objected to this proposed trust acquisition. On February 6, 1995, the Common Council of City of Hudson adopted a resolution expressing its opposition to casino gambling at St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to the proposed trust acquisition for gaming purposes. The communities' objections are based on a variety of factors, including the following: 1) Increased law enforcement expenses due to potential exponential growth in crime and traffic congestion; 2) testing waste water treatment facilities up to remaining operating capacity; 3) problems with solid waste; 4) adverse effect on the communities' future residential, industrial, and commercial development plans; and 5) difficulties for current Hudson businesses to find and retain employees.

"The record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin, the Shakopee Mdewakanton Sioux Community tribe, as well as by a substantial number of other Indian tribes both in Wisconsin and in the neighboring State of Minnesota. Their opposition is centered on the harmful effect of this acquisition on their gaming establishments.

"In addition, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District, and the U.S. Representative in whose district St. Croix Meadows Greyhound Track is located have expressed strong opposition to the proposed acquisition.

"Finally, we have received numerous complaints from individuals because of the proximity of the proposed class III gaming establishment to the St. Croix National Scenic Riverway, and the potential harmful impact of a casino located one-half mile from the Riverway."

For these reasons, it was my recommendation, right or wrong, based on the record, that I wasn't prepared to recommend that the Secretary should take the land into trust at this time.

I mean, I looked at the record; these were the facts that were cited. I did not do an in-depth examination of whether, you know, they were correct or incorrect. I didn't really want to substitute my judgment here for what the towns and the elected representatives were telling us. Essentially what I thought at the time is that, based on what was submitted, given the broad discretion that the Secretary has, this was just not a good idea.

Question. Understood.

Answer. I mean, we can go until I am blue in the face talking about whether I did the right thing, whether the opposition was justified, whether they submitted records, you know. For all I know—someone may disagree with me—that was my best gut feeling at the time, and I stand by that.

Question. Now you mentioned you did not do an in-depth review, but reviews were done by people who were in—

Answer. I read the record.

Question. And you obviously rejected the record. Did you ever go to Hudson, Wisconsin, to visit the dog track?

Answer. No, I did not.

Question. Have you ever been to the town of Hudson?

Answer. No, I have not.

Question. Have you ever relied on any representations about the opposition, apart from that which is in the record?

Answer. No, I have not.

Question. For example, did you ever make a telephone call to a citizen of Hudson, Wisconsin, to talk to them?

Answer. No, I don't think I did. If I talked to a citizen from Hudson, Wisconsin, it is because I have had numerous conversations. People call the gaming office all the time.

Question. But I am looking for a purposeful attempt to get behind something that has already been done by career professionals of the Department of Interior, who have spent a great deal of time—in fact, well over a year—analyzing material that they have accumulated, assessing that material, digesting, and coming to conclusions based on the fact they have actually analyzed the community opposition and the points that have been brought before them.

Answer. You mean the area office recommendation?

Question. The local office at Ashland and the area office in Minneapolis?

Mr. BALLEEN. For the record, I am going to object to that question. Does the witness have any reason to believe they spent a year—

The WITNESS. No. I mean, I am not addressing—I have no idea whether that is true or not; it is just the only statement I can make is what is in the record, the recommendation of the area director.

EXAMINATION BY MR. WILSON:

Question. Right. Did you ever have a telephone call from Denise Homer in the area office in Minneapolis about the Hudson Dog Track application?

Answer. No, I have not.

Question. Now as the head of the Indian gaming management staff, you were presumably involved in reviewing the materials presented to you from the area office?

Answer. Right.

Question. Did you ever feel that it might be beneficial to you to consult with another career professional who had been in charge of preparing materials for your review?

Answer. Not at the time. That was the first acquisition I reviewed, and I didn't do that. But I got to tell you that now I think visiting Hudson, in hindsight, would have been a good idea. I think it is important for staff of the gaming office to actually go and check out the acquisition, proposed acquisition. That is true, we didn't do that in that case. That is unfortunate.

I think that speaking with the gaming coordinators of the area is something we have done consistently, and we keep very close track, and I certainly have done that subsequently. This was a first try for me here, and I got to say, would I do things differently today? Yes, there is no question about that, but that is what I did at the time.

Question. Now based on the fact this was your first attempt at this type of thing, it seems to me the testimony thus far is that in terms of career professionals you discussed this with were people in the main office. John Duffy, you have testified, was involved in this process, other people at Interior, and did you ever feel the need or that it might be beneficial to you to call back and ask about anything in the record?

Answer. I didn't do it in the context of the Hudson Dog Track application.

Question. But you rejected the material that they prepared it for?

Answer. That is right, because based on 151, in my recommendation, based on the record, I would not recommend that the Secretary exercise the discretion to take the land into trust.

Question. Does an area office take into consideration section 151 issues?

Answer. Yes. Yes, they do. They are supposed to.

Question. And in this case, did the area office take into consideration section 151 concerns?

Answer. Well, it is not in the November 14th submission, but I think there was a later submission concerning that.

Question. And just as a matter of trying to improve the administration of the office that you were in charge of, did you ever seek to have a dialogue to explain with

career people back in locations where the applications were coming from how they might be able to improve their understanding of the process?

Answer. Subsequently, yes.

Question. Subsequent. And when would that have been?

Answer. Well, I mean, the 3 years that I was there, we had extensive contacts with all the gaming coordinators, with the area directors, with the Solicitor's Office staff. In fact, we even held a conference—I think it was in February of '97—to talk about gaming issues and to essentially communicate to the staff out there how we handled issues and try and understand their concerns to try to improve the management of gaming issues within the Bureau of Indian Affairs.

And we revised the checklist that was issued in February of '97, I believe, that is internal agency guidance to the areas on what to do when they receive a gaming application. And that was an effort to try to have a standardized process for the submission of gaming acquisitions, and what should be looked at, and make sure all the bases are covered.

So, yes, that is something that I looked at as part of my job at the time, to essentially improve the gaming management by the Bureau of Indian Affairs, and it was hopefully done to the extent I could.

Question. Now how did you avoid coming to the conclusion, for example, if you read—Ms. Harsdorf's letter is in the record, and it makes the points that you see before you on the document you have looked at. How did you avoid coming to the conclusion that somebody wrote it, so it therefore must be right? Did you just accept everything at face value that came from the community in terms of opposition or support? I mean, and I will try and direct my question—

Answer. We just looked at the record.

Question. Right, but there was a lot of support in the record, too, for the application. It seems you accepted the opposition but rejected the support. If you were being evenhanded, you would accept the opposition and the support.

Answer. We looked at both sides, I think, and certainly this was a difficult—you know, there were arguments on both sides, and it was not an easy call for me to make, so I certainly looked at the expression of support and the expression of opposition before making my decision.

In the letter, I essentially say why we decided not to do it, the draft letter of June 29. I don't say I also considered blah, blah, blah, and on balance I decided that it was not a good idea, but I did consider it, and it was not an easy decision.

Question. Now you quoted from a June 29 draft a moment ago, and you read the entire quotation, and it identifies a number of factors. Is it your representation today that all of those factors were factors that could not be cured, that there could not be an acceptable combination between the opponents and whatever the issue was and—

Answer. You know, anything can be changed. We sent a letter saying, at this time, based on this record, because of these issues, we feel that we are not prepared to take land into trust, and the applicant can ask us to reconsider, based on additional factors, they can ask us—they can resubmit an application after they go to the—you know, after they address the factors that we cite. And so, sure, it can be cured. They could have gone back to the city of Hudson, the cities of Troy and Hudson, and essentially worked together with them to change that.

Question. How, in this case, did you help the tribes to identify the fatal flaws in the application?

Answer. By listing them in the—well, what I thought were the flaws in my June 29 draft.

Question. Did you share the June 29 draft with the applicants?

Answer. No, I did not.

Question. Now if you had shared the June 29 draft with the applicants, is it possible they might have come back and offered accommodations to the problems you identified?

Answer. If we had done more consultation with them and told them, yes, it's possible. We didn't do that in this instance.

Question. Why would you not have done that?

Answer. We did it to some extent. We had meetings with them, and we informed them, and they were aware—they had the record, so they knew of the opposition of the town of Tory, the city of Hudson, and the opposition of the other tribes; they knew that it was there.

You know, at the time what we could have done is sent a memo back to the area office saying, look, you know, at this time we are not prepared to take the land into trust because we have the following concerns and that needs to be addressed.

Question. That has happened in other cases, hasn't it?

Answer. Where we—

Question. Have sent a letter back to the area office identifying the factors that are of concern at the main office?

Answer. Well, what we do is, if there is a problem that area office made, in other words, if they didn't submit something or they are missing NEPA compliance, or if there is something that they can cure themselves, we definitely would send the thing back, the application back to them, and say, you are missing this, you are missing that, the title is not well addressed, or whatever the requirements are that we have that are not well addressed. And in this case, I don't think this was something that the area could fix, this was something that the applicants needed to fix.

Now we could have sent a memo back to the area and tell them to communicate that to the tribe. I chose, instead, to write directly to the tribe. I think the result is the same, you know.

Question. Well, let me just ask you, the result is the same, you indicate, but it seems to me the result is dramatically different if you give people an opportunity to cure perceived defects than if you just simply say, this is rejected. There is no opportunity after rejection.

Answer. Yes, there is. They can resubmit an application after hearing the defects.

Mr. HORN. Could they do that now?

The WITNESS. Yes, definitely.

Mr. BALLEEN. In fact, you sent the July 14 letter, which goes through some of the reasons why this application was rejected, the local opposition, to the tribal chairman to the three applicant tribes.

The WITNESS. That is right.

Mr. BALLEEN. So they could have resubmitted, tried to cure the defects, tried to cure local opposition, if they could.

The WITNESS. Right.

Mr. BALLEEN. That is a substantial hurdle to cure, is it not?

The WITNESS. Well, it is, it is. It is a significant hurdle. I mean, if the towns—you know, the community is dead set, if political elected representatives are dead set against this casino, then it is a significant hurdle to fix, yes.

Mr. HORN. Well, let me ask you here, on page 6 you say, at the bottom, just before C, quote, "Several thousand cards, letters, and petition signatures have been received in support of an Indian casino at the Hudson Dog Track."

Now did you have your staff sort those out so you knew how many from Hudson came and where these letters came from? Several thousand is pretty impressive to me, and, frankly, it means a heck of a lot more than 28 members of the State legislature who don't live there and might just have an ideological hang-up on gambling. And then they aren't writing the law when they are 28, they need a majority, they didn't have a majority, but it is impressive for some people on stationery.

So what about these thousands of cards, letters, and petition signatures? Where were the people from?

The WITNESS. Can you direct me to what you are reading from?

Mr. HORN. It is the bottom of page 6, just before C, on GTS number 7, and that is your memo?

The WITNESS. Well, this is Mr. Hartman's memo. You would have to ask him.

Mr. HORN. It has your name up there.

The WITNESS. I know, because he transposed his June 8 memo with this heading, but it is—

Mr. HORN. You are saying this is the June 8 memo?

The WITNESS. It is a version of the June 8 memo, and what it is, it is definitely—I think Mr. Hartman said he made some additions to the June 8 memo in here.

Mr. HORN. Is that one of the additions, that several thousand cards, letters, and petition signatures had been received?

The WITNESS. It could be.

Mr. HORN. I mean, it is given two lines and one word, and it seems to me when you have thousands and you have quoted every other doggoner, or whatever, in the area, why didn't we explore who these people are?

The WITNESS. You would have to ask Mr. Hartman that.

Mr. HORN. So you didn't write it, he wrote it.

The WITNESS. That's right.

Mr. HORN. But you signed it?

The WITNESS. No.

Mr. HORN. This is just a draft? Did you ever see it?

The WITNESS. This is a working draft that he put together in case we were going to—in case we were going to use it. I never finished the review of this and never signed it or edited it. So I did see it at some point, I cannot recall when. In fact, I did talk to Mr. Hartman about that, and he doesn't think that this left his com-

puter until after sometime in July. I didn't consider this particular version when I wrote my June 29th opinion—I mean draft recommendation.

Mr. BALLEEN. So you didn't see this, this memorandum, until after the final decision went out?

The WITNESS. I may have; I don't recall. I don't think so. From what Mr. Hartman said, it would have been—if this did come out in July, then it would indicate that I didn't. Let's just leave it at that.

Mr. BALLEEN. But the tribes could have come back after the July 14 letter to try to cure the defects.

The WITNESS. Well, they did file a request for reconsideration with us, in fact.

Mr. BALLEEN. And did they try and cure the defects?

The WITNESS. I don't recall what is in their request for reconsideration. What happened is that they also filed a lawsuit in Federal district court, and at that point our lawyers advised us that after the lawsuit is filed, we should not consider the request for reconsideration.

EXAMINATION BY MR. WILSON:

Question. How do you know that?

Answer. Because I think I specifically asked the attorneys in the case whether the request for reconsideration should be responded to.

Question. Let's just, if we can, turn our attention to the document we began the day with, the memorandum for Scott Keep and David E. Jones.

Answer. Yes.

Question. Now when you say your lawyers, you earlier identified Mr. Jones as one of your lawyers?

Answer. That is correct.

Question. And this is a memo from February 14 of 1996, in which he states in the final paragraph: "As you know, we need to move quickly on this opportunity for settlement before the court reaches a decision on the discovery motions. Please advise us if you need any additional information."

Did you have any discussions with anybody about the prospects of settlement?

Answer. Yes, I did.

Mr. ELLIOTT. Wait a second. Mr. Wilson, we have been over before getting into the litigation and how it is being handled and how it has been handled, and it was your vowed purpose, and you have averred that at almost every deposition. It is not our intention to get into the litigation, and I think that is exactly where you are right now, and I object to the question.

Mr. WILSON. Well, as I have said, we do not want to get into the substance of the litigation, but we do want to determine whether information is correct or not correct, and I think we can leave it. You made a statement about what you believe to be correct, and I think we can leave it there, and we will look at documents at a later date that discuss this very issue.

Mr. ELLIOTT. I would point out, this document, you have raised it before and you entered it in as part of the exhibits of Mr. Skibine's deposition; it is marked "privileged."

Mr. WILSON. My understanding, Mr. Elliott, we have had a lot of problem with draft and headers and footers on documents here, but this appears to be a memorandum for Scott Keep from David Jones, and it appears to be privileged.

Mr. ELLIOTT. "Privileged" has been handwritten on it, and it says "attorney-client communication."

Mr. WILSON. That presumably is between Mr. Jones and Mr. Keep; correct?

Mr. ELLIOTT. Mr. Jones, and the Department of Interior was represented at that point by Mr. Keep, yes.

Mr. WILSON. Right, and it has been furnished to us.

Mr. ELLIOTT. It has, because you asked for all documents, and, as we said, we are cooperating. We also said as we gave you documents, including the administrative record, in which there was a volume of privileged documents, that we were giving you privileged documents.

Mr. WILSON. And in every other instance you identified those documents on a log and you set them out and you indicated those documents are subject to your claims of privilege; correct?

Mr. ELLIOTT. No, sir, not in every instance. Early on, they were giving documents; we neither marked in each document nor listed them on a log at that time.

Mr. BALLEEN. Does the Department intend to waive the privilege by giving copies?

Mr. ELLIOTT. No, it does not. We are aware of court decisions that indicate a provision of a document to Congress in pursuit of its legislative or oversight activity does not waive the privilege. We are not so clear on the court cases as to whether

release by the Congress waives the privilege, and that is why we pointed out the fact that these documents are privileged, because we don't want Congress to waive them either.

Now you introduced this early on as a part of your opening statement because you were taking umbrage of the fact that you got documents yesterday and indicated that it was sort of a surprise. I think if you read the prior communication to you or to the chairman, it indicated we intended to complete our submissions in response to the subpoena on January 12, which was yesterday, and that is when it was done.

Mr. WILSON. That is correct. Actually, this is a good time and maybe we can get to something here. I am very interested in when Ms. Deer's schedules were identified. Do you know when they were identified and located?

Mr. ELLIOTT. I do not, no.

Mr. WILSON. Do you have any belief they were identified sometime yesterday after about 1 p.m.?

Mr. ELLIOTT. No, I don't know.

Mr. WILSON. Can you identify any conceivable reason for not providing Ms. Deer's schedules prior to Ms. Deer's deposition?

Mr. ELLIOTT. I can't provide any reason because I wasn't doing the search in that office.

Mr. WILSON. Could you please provide me—who was?

Mr. ELLIOTT. I would have to check; I don't know.

Mr. WILSON. Would you please provide me that information?

Mr. ELLIOTT. Sure.

Mr. BALLEEN. May I make a note? If you wish to have conversations with Mr. Elliott, they should not be part of this deposition and this witness. I think we should do that off the record or in a separate room. He is not under oath.

Mr. WILSON. I understand, but I, in this case, was quite happy to have it on the record.

Mr. BALLEEN. I suspect you were, but I object to it occurring on the record. He is not here as the witness. He can have discussions with us, but I don't think it is appropriate as part of a deposition of a witness. I hadn't objected up until now, but—

Mr. WILSON. I understand that. I really appreciate that, and, you know, we are all here, hopefully, to try and determine facts and matters before us, and that is one of the issues that ultimately will come before us. And to save time, we have been able to do that.

[Skibine Deposition Exhibit No. GTS-9 was marked for identification.]

Mr. WILSON. I would like to present Mr. Skibine with a document that has been marked for the record GTS-9. It is a fax transmission sheet from Representative Gunderson's office. And attached to that is a letter from Representative Gunderson to the Honorable Bruce Babbitt, dated April 28, 1995. And you can take a moment to familiarize yourself with that. I have one question about one sentence at the bottom of the first page.

The WITNESS. Okay.

Mr. BALLEEN. Excuse me, can we go off the record for a second.

[Discussion off the record, and recess.]

Mr. WILSON. Back on the record.

EXAMINATION BY MR. WILSON:

Question. When last we were speaking, I had provided you with a document which has been marked for the record exhibit GTS-9, and it is a letter from Representative Gunderson to Secretary Babbitt dated April 28, 1995, and the only section of this letter that I wanted to ask you about was a sentence towards the bottom of the first page, second to the last sentence. It reads, "According to your office, since Congress passed IGRA in 1988, the Secretary of Interior has never approved the acquisition of off-reservation land to be used for casino gambling."

Bearing in mind this letter was written in 1995, is this statement about off-reservation gambling correct?

Answer. It is not.

Question. It is not. And why is it not correct?

Answer. Because I think the Secretary has approved, at least on one occasion, the acquisition of off-reservation land for gaming under IGRA.

Question. Where was that, and when was that?

Answer. Well, I am aware that in 1990, I believe, land was acquired in Milwaukee, Wisconsin, for the Forest County Potawatowmie Tribe for gaming purposes under IGRA, for instance.

Mr. BALLEEN. Were there any cases where off-reservation land was denied?

The WITNESS. I think that happened also. I would have to look at my records on that, but both ways it happened

[Skibine Deposition Exhibit No. GTS-10 was marked for identification.]

Mr. WILSON. I have provided Mr. Skibine with a document that we have discussed quite a bit already today—actually, we provided you with a document I did not want to provide you with.

I am providing Mr. Skibine, for the record, with a document that has been marked or is being marked, as I speak, for the record, exhibit GTS-10, and it is something we have referred to. It is a document dated June 8, 1995, purportedly to the director of the Indian gaming management staff, and it is the memorandum we have referred to as the Hartman memo.

And the one thing I wanted to talk about in this memorandum is, on page 4, just above section C, there is an indication that Sandra Berg, a longtime Hudson business person, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes. Is that—

Mr. BALLEEN. Excuse me, where is that?

Mr. WILSON. The final sentence on page 4, above subsection C, and reading that again, Sandra Berg, a longtime Hudson business person, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

EXAMINATION BY MR. WILSON:

Question. Is this an observation that you investigated at the time you were analyzing whether to approve or reject the application?

Answer. No, it is not an allegation we investigated.

Question. Do you know whether it is correct or incorrect?

Answer. No, I do not know whether it is correct or incorrect.

Question. Would it make a difference if it was correct?

Answer. I think that if it was correct, it would make a difference, yes.

Mr. HORN. I'm sorry, if it were correct, it would make a difference?

The WITNESS. It would make a difference if the opposition to the acquisition in Hudson was receiving money from opposing Indian tribes.

Mr. HORN. So that would bother you?

The WITNESS. Yes.

Mr. HORN. Did you see this memorandum? It says Indian gaming management staff. Is that Hartman's signature there?

The WITNESS. Yes, it is.

Mr. HORN. So did you see this document?

The WITNESS. Yes, I saw this document.

Mr. HORN. Did you read that particular sentence from Sandra Berg that counsel has noted?

The WITNESS. Yes.

Mr. HORN. And what would you have done?

The WITNESS. Well, it was an allegation, and I think that if they had submitted documentation or proof in the record, it is something that we would have definitely considered.

Mr. HORN. Well, did you ask him to do that?

The WITNESS. No, we didn't. No, we did not. We feel that we—you know, it's up to the people who submit letters to essentially support their allegations. In fact, we did talk to Mr. Havner, the president of Galaxy Gaming. I recall we had a meeting with him where he made the same allegations, and at the time he volunteered to provide us, and we asked them—he volunteered to provide documentation supporting the allegation, and the allegation, a very serious allegation, was that one of the tribes was essentially bribing city officials.

Mr. HORN. This would be in Hudson or related cities?

The WITNESS. In Hudson.

Mr. HORN. In Hudson?

The WITNESS. Right. And I don't think he ever provided that documentation.

Mr. HORN. Well, if we had some honest DA's and U.S. attorneys, they would go after that and see what is there. That is a lot of money, let's face it. I mean, it is one person's income with this one Minnesota tribe that would get a lot of bribery done, just as it got a lot of political action in Washington done, just one person's per capita income, and I am surprised you wouldn't have just picked up the phone and said, what the hell is going on, and let's investigate it, and where is the proof?

Mr. BALLEEN. But you did ask Mr. Havner for documents?

The WITNESS. We asked him to provide it, but I don't know how exactly we were going to start our own investigation in this matter. We don't have the resources to do that.

Mr. BALLEEN. Do you have investigators on your staff?

The WITNESS. No.

Mr. BALLEEN. Do you have prosecutorial power?

The WITNESS. We don't have anything like that.

Mr. BALLEEN. Do you have subpoena power?

The WITNESS. No.

Mr. HORN. How about phoning the U.S. attorney in that district and saying, look, we have something here that might be true, given all the money that the Minnesota Indians have?

The WITNESS. I don't think we felt that it was our responsibility to do that on this allegation. We receive letters making tons of allegations. We cannot follow everything that comes into the office.

EXAMINATION BY MR. WILSON:

Question. But, Mr. Skibine, this is not everything that comes through the office, this is a fairly significant issue that potentially is the root cause of a great deal of opposition, potentially. We don't know that, but from your testimony, you don't know that either; is that correct?

Answer. I don't know what?

Question. Whether this is correct or not.

Answer. No. I mean, we assume that unless it's in the record that there is proof of that, that it is an unsubstantiated allegation.

Question. You made a point there that was somewhat confusing. You said it's up to the people providing letters to substantiate the allegations. Now, is it your testimony here today that the letters of opposition, some of which you have relied on, some of which are cited in this memorandum, all had substantiating information supporting the allegations or observations made in the letters of opposition?

Answer. Well, on what their opinion was. This is much more than that; this is an allegation of impropriety that occurred, and we just don't have the ability to go back to people and investigate this matter.

Question. I understand that, but do you see the difficulty for us? It appears you were relying on letters and statements of opposition without digging beneath the surface, but you are rejecting the letters of support or letters criticizing some of the opposition. It appears there is an uneven type of treatment here.

Answer. I think that we rely more on the opposition from elected officials than from some individual.

Question. So—

Answer. Because, essentially, we believed that the elected officials represent their district.

Question. What is your definition of "community" in the IGRA analysis, detriment to the surrounding community? What is your definition? You are head of IGMS. What is your definition of "community"?

Answer. Hold on a second. We dealt with that in the February 21, 1997, revised checklist.

Question. Well, I am asking about 1995, at the time of the Hudson application.

Answer. I think in the Hudson application, for the community, we looked at the county, the city of Hudson, and the town of Troy.

Question. Let me just refer back a moment to the letter from Secretary Babbitt that we were discussing at the very beginning of this deposition. Secretary Babbitt is indicating here that there was opposition from seven Minnesota Members of Congress. Do they fit into your definition of "community"?

Answer. Under section 20?

Question. Under the IGRA analysis?

Answer. Under the IGRA analysis, no.

Question. Now Secretary Babbitt has indicated in sworn testimony that he relied—the Department relied solely on section 20 of the Indian Gaming Regulatory Act, and it is your testimony that Minnesota Congressmen would not be part of the community that would go into your analysis under IGRA; is that correct?

Answer. That is correct. I think that a Minnesota Congressman would not be part of the surrounding community of Hudson.

Mr. HORN. Why wouldn't they, if the Minnesota casino is considered part of that community, in effect?

The WITNESS. Well, the area office consulted with all Minnesota and all Wisconsin Indian tribes, and at the time there was no specific guidance on that, and I think

that was their interpretation, that they would only consult by local community for purposes of IGRA—the surrounding community would consult with the non-Indian communities that are, you know, the ones that I mentioned, but for purposes of the consultation with nearby tribes, they consulted with all Wisconsin and Minnesota tribes.

The act, section 26, followed in consultation with nearby tribes and appropriate State and local officials. The Secretary makes a determination that it is in the best interest of the tribe and not detrimental to the surrounding community. It wasn't clear, I think, of whether consultation with nearby tribes means that it should be evaluated the same as the surrounding community for purposes of detriment.

And at the time of the Hudson acquisition, the surrounding community, I think, was considered the town of Troy. The city of Hudson and the county where it's located.

But in terms of consultation with nearby tribes, they decided to consult with all tribes within Minnesota and Wisconsin. There was a substantial—excuse me, there was a subsequent guidance issued by the BIA that describes that. And what I was just referring to on February 21, 1997, we refined that even more. And if you want, I can tell you what we consider that now, for purposes of IGRA.

Mr. HORN. Is that a part of this record, Counsel?

The WITNESS. Well, it was—are you asking—

Mr. HORN. I'm asking Counsel. Is that part of this record and of those relevant things?

Mr. WILSON. I asked the question, actually.

Mr. HORN. Was this developed after your experience with this particular application and you felt you needed different types of criteria as guidance of what a person in your spot and the Indian gaming group would need to follow up on?

The WITNESS. There was actually a checklist that was devised in, I think in September of '94, but it was not used by the area office for the Hudson proposal because their review was done before September '94, substantially.

What I decided, when I looked at the September '94 checklist, is that it needed to be refined. So we did a further revision based on my reading of the checklist at the time and feeling that it needed additional refinements.

EXAMINATION BY MR. WILSON:

Question. I wanted to clarify and recapitulate and try to get a clear understanding. I believe you indicated that you accorded greater significance to expressions of opposition than expressions of support; is that correct?

Answer. No.

Question. How did you determine, for example, the difference between support and opposition and provide relative weight to support versus opposition?

Mr. BALLEEN. So the record is clear, his testimony was he provided greater deference to locally elected officials; right?

EXAMINATION BY MR. WILSON:

Question. Okay. And by locally elected officials, what is your definition?

Answer. Meaning the mayor of the city of Hudson, the council, the city council of the city of Hudson, the board of whatever, the governing body of the town of Troy, the county officials, if any submitted documentation, the local U.S. Congressman who—

Question. Say, for example, how would you determine between support from a St. Croix County supervisor and opposition from the town of Troy? First of all, do you know where the town of Troy is located vis-a-vis Hudson?

Answer. I think it's right next door.

Question. Now, can you provide a little bit more explanation for us, if you could?

Answer. On what?

Mr. ELLIOTT. Explanation?

EXAMINATION BY MR. WILSON:

Question. Is it contiguous? Is there a mountain between or a hill or?

Answer. I think it's contiguous. I haven't been to the town of Troy so I don't exactly know the geography there.

Question. Would it surprise you to know there's a large hill, a small mountain, between one and the other?

Answer. I don't know.

Mr. BALLEEN. Is it true the town of Troy surrounds the proposed site of the dog track?

The WITNESS. From what I recall. But I just know that it's the neighboring community.

EXAMINATION BY MR. WILSON:

Question. So you recall the town of Troy surrounds the dog track; correct?

Answer. The town of Troy surrounds the track? Well, I don't recall exactly.

Question. You answered Mr. Ballen's question from what I recall, yes.

Answer. No, in fact, I can tell you that I know it is adjacent or contiguous to the city of Hudson, and that's why it was consulted.

Question. And how do you know that?

Answer. Because I think it's in the record, from what I understand.

Question. And is that something you would have learned, say, for example, from the representations made by the area office in the papers that they have sent to you?

Answer. I don't remember how I learned that. By reading the record.

Question. But just going back to my initial question, support from, say, the St. Croix County supervisor or from the school board in Hudson, how would you weigh that against opposition from the town of Troy?

Answer. Equally, I think.

Question. You would weigh them equally?

Answer. I think so.

Mr. BALLEEN. And I am going to interpose a clarification or objection. Was that in the record? Was there support—is this a hypothetical question?

The WITNESS. I think that's a hypothetical question.

EXAMINATION BY MR. WILSON:

Question. Do you know whether there was support or opposition from St. Croix County?

Answer. I think the county stayed neutral, from what I recall.

Question. Do you know whether the school board provided any support?

Answer. I don't recall. I don't recall that specifically.

Question. I just wanted to actually focus on a difference that we have discussed in part between the document which is marked GTS-10 and the document that is marked GTS-7. I think you earlier indicated that the document that has your name on it that says from George T. Skibine is a document that was produced from the June 8 Hartman memorandum; is that correct?

Answer. That's correct.

Question. In the two documents there is an inclusion in the later document that has your name on it that was not in the earlier Hartman memo, and it is at the section just above subsection C. So if you turn to the memo with your name on it on page 6.

Answer. Yes.

Question. The section that does say several thousand cards, letters and petition signatures have been received in support of Indian casino at the Hudson Dog Track.

Answer. Yes.

Question. That sentence is not in the exhibit marked GTS-10, the Hartman memorandum.

Answer. Right.

Question. Did you have any discussions with Mr. Hartman about the inclusion of this sentence?

Answer. No, I did not.

Question. Were you aware that there was an inclusion in any representation of facts regarding the Hudson Dog Track that there were several thousand cards, letters, petition signatures that had been added from a previous draft of the document?

Answer. No. No.

Question. Do you know why this was added to the original draft from Mr. Hartman's draft?

Answer. No, you would have to ask Mr. Hartman.

Mr. WILSON. I have provided Mr. Skibine with a document that has been marked Exhibit GTS-11, and it appears to be an e-mail from Mr. Skibine to a number of individuals. They are identified as Milona Wilkins, Tom Hartman, Paula Hart, Tina LaRocque.

The WITNESS. Okay, I've read it.

[Skibine Deposition Exhibit No. GTS-11 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. There's one sentence that I'm interested in this document. In the very middle of the e-mail.

First of all, let me ask you, do you recall sending this e-mail?

Answer. I do now, yes.

Question. It's dated July 8, 1995. So that is the week before the decision was finally released.

Answer. Right.

Question. You testified earlier you were in someplace far from Washington. I don't remember where it was, but I think it was Denver for the week before.

Answer. The following week. The week after this.

Question. The week after you drafted your initial—

Answer. No, I drafted my initial draft on June 29th. Then I went on vacation in Vermont. And I came back from Vermont, and I think this is on the weekend. I came to my office to pick up materials I needed for my trip to Denver, and what I apparently did, which I did not recall in my previous deposition, and I want to clarify that I think the question was asked if I had any input after June 29th, and at the time I think I said I didn't recall. Maybe I said—in any event, I didn't recall.

But this e-mail surfaced and was provided to the committee afterwards and now it appears that, and on further thinking, that refreshes my recollection that I did go to the office to pick up my information I needed for my Denver trip. And apparently what I did is I incorporated changes to the draft, whatever draft it was at that point, and left it with my secretary.

Question. So between your vacation and business trip you sent this e-mail to these people.

The sentence I'm interested in is, the Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes area.

What was your knowledge of the Secretary's position vis-a-vis the release of the decision?

Answer. By "the Secretary," I really mean the Secretary's office. Someone in the Secretary's office. Someone in the Department told me that the Secretary's office wanted this out because of Ada's impending visit to the Great Lakes area.

I had no personal knowledge of that visit, but obviously that was communicated to me in some fashion. I certainly did not speak with the Secretary personally. And just like we said before, when I used the word "Secretary," I speak generically for the Department.

Question. Now, given that you were on vacation and it was over the weekend, do you have any recollection of who you spoke with that would have you draft this sentence and e-mail?

Answer. No, I just have not—I do not. I cannot speculate.

Question. Do you know whether you spoke with Mr. Duffy and he told you this?

Answer. No, I can't recall. I can't recall.

Question. Well, I won't go through a list of people then.

Mr. BALEN. Other than this e-mail, do you have any independent recollection of this?

The WITNESS. I didn't—I did not.

Mr. BALEN. Do you know, sir—

The WITNESS. Well, because I see the e-mail and, obviously, this is what I did. I don't have an independent recollection.

Mr. BALEN. Beyond the e-mail?

The WITNESS. Beyond the e-mail; right. But I think that's pretty good evidence that I came to the office and somehow decided instead of letting my secretary put in the changes, that I did it. So that is what it says.

Mr. HORN. You are saying you did the redrafted version?

The WITNESS. I put in the marked-up draft with Heather Sibbison's and Duffy's suggestions.

Mr. HORN. Okay.

The WITNESS. I plugged them in.

Mr. HORN. In other words, you took their suggestions?

The WITNESS. The only thing I can speculate is that there must have been a draft that I found in my box or the package that had these changes. I don't recall what those changes were. I sort of ministerially typed them in.

Mr. HORN. Well, do we have a copy of your original draft somewhere?

The WITNESS. Yes, we do.

Mr. HORN. Okay.

EXAMINATION BY MR. WILSON:

Question. Do you know—

Answer. Are we still on the e-mail?

Question. Yes, just one more question about this. Do you know whether or not Ms. Deer knew what the ultimate decision would be as of July 8 of 1995 when you sent this e-mail?

Answer. I have no idea.

Question. Did you have any conversations with Ms. Deer about the Hudson Dog Track matter?

Answer. Not that I recall.

Question. In 1995 or subsequent, at any time, have you ever been aware that the Ho-Chunk tribe was negotiating to buy the Wisconsin Dells Greyhound Track?

Answer. No, that's news to me. I don't remember knowing that. The Wisconsin Dells Dog Track?

Question. Yes.

Answer. No.

Question. Has anyone ever—well, let me take that back to 1995. In 1995 or before, had anyone ever discussed with you or mentioned to you the political affiliation of any of the tribal representatives who were in favor of the Hudson Dog Track application?

Answer. I think that at the February 8th meeting with Congressman Oberstar some of the tribes may have mentioned that during the meeting.

Question. And what did they mention?

Answer. I don't recall specifically.

Question. Just in a very general sense what did they tell you?

Answer. They didn't tell me, they were talking to the counselor. Well, let me—I might remember, now that I think about it. I think Counselor Duffy said that the decision would be made on the record, but even if the Department sent a letter of concurrence to the Governor of the State of Wisconsin, the Governor of Wisconsin, which I believe was a Republican, is a Republican, would have the final say-so.

And someone, and I don't remember who amongst them, and I thought it was a tribal representative, expressed—how can I say this—expressed satisfaction or that they, as Democratic types, would need to hope for a Republican Governor to rule in their favor. I think you can put it in that context.

Mr. HORN. I'm not quite clear who the Democratic types were. You described them as Democratic types.

The WITNESS. Meaning they as Democrats.

Mr. HORN. Who is the they?

The WITNESS. Well, the individual who spoke.

Mr. HORN. Were they Interior people?

The WITNESS. Oh, no, no, no, no, no.

Mr. HORN. Townspeople? Who were they?

The WITNESS. No, no, they were either members of the tribes, either staffers for the congressional—the Congressmen who were there, or lobbyists for the tribes, or tribal attorneys.

Mr. HORN. These are the Wisconsin tribes?

The WITNESS. No, Minnesota tribes.

Mr. HORN. Minnesota tribes.

The WITNESS. Right.

Mr. HORN. Okay, now I get it.

Mr. BALEN. Is that reflected in your notes of the meeting?

The WITNESS. I don't know. I'd have to check. But that's in the record.

Mr. BALEN. Is it all right if he checks and refreshes his recollection?

Mr. WILSON. Absolutely.

Mr. BALEN. If you have your notes, why don't you check them.

The WITNESS. Well, I have them somewhere. If you have them, it might be quicker. I didn't tab this.

Mr. WILSON. I don't have them.

Mr. BALEN. I don't have them, either.

The WITNESS. Oh.

Mr. WILSON. We're letting you down here. We're normally good at giving you paper.

The WITNESS. No, I don't think so. I don't think that's in here.

Mr. HORN. Just to that conversation that you described, is it that they have to depend on Governor Thompson of Wisconsin to turn it down? Was that the implication, or am I getting it wrong?

I thought the Governor had approved this despite people thinking he was against it, and I'm just a little confused as to—maybe you can clarify for me. Did the Governor take a position on this Hudson Dog Track thing?

The WITNESS. The Governor in the record did not take a position.

Mr. HORN. Would not take?

The WITNESS. No, did not.

Mr. HORN. Okay. And then the Indians in Minnesota were sort of counting on him to say no, I take it; or were they?

The WITNESS. Well, no.

Mr. HORN. You said they are sort of Democrats and they have to depend on a Republican Governor.

The WITNESS. Right.

Mr. HORN. It sounded to me like they thought the Republican Governor of Wisconsin agreed with the Indians, who were Democrats in Minnesota, that the application should not be approved. Am I wrong on that?

The WITNESS. No. Yes. I think that they were concerned that, in fact, the Governor would, could decide that the application should be approved.

Mr. HORN. So that was their concern, then?

The WITNESS. Yes.

Mr. HORN. It wasn't that he was against it?

The WITNESS. Right.

Mr. HORN. It's a matter of timing here, where apparently some of these people made their decision, and that's what I'm curious about.

Mr. BALLEEN. Were you aware of the newspaper articles at the time that Governor Thompson opposed this casino? You mentioned a debate in a campaign that was reported in the press. Were you aware of those articles?

The WITNESS. I may have been. I think there were reports that he was for, that he was against, he couldn't make up his mind. I don't think that we knew for sure where the Governor stood on this issue.

Mr. BALLEEN. Did it matter to you, when you were at that meeting at the Minnesota delegation office, whether anyone was a Democrat or a Republican or what their point of view was based on party affiliation?

The WITNESS. No, to me it didn't make any difference.

Mr. BALLEEN. Was it a factor in your decision at all?

The WITNESS. No, it was not a factor in my decision.

EXAMINATION BY MR. WILSON:

Question. Mr. Ballen asked if you were aware of reports that Governor Thompson was opposed to the dog track, and I will have copies made of this, I'm using a royal "we" here and I'm hoping I can get some help on that, but I will just read this and we will bring them back and get them in the record.

I will give you a copy of this. I have an article here from the Hudson Star-Observer, February 10, 1994, and this is the Hudson newspaper from Hudson, Wisconsin, and the heading is Thompson says he "won't stop" casino dog track. And the operative quote here, and it is in quotation marks, is "I will not promote and I will not block, Thompson said. I'm on the tail end of the process, and if everyone else, including the local people, approves it before me, I won't stop it."

I will give you a copy of this.

Answer. Finish your question, I'm sorry.

Question. Have you ever seen this article?

Answer. I don't recall seeing this article, no.

Mr. WILSON. We will get copies made.

Mr. HORN. Could some of your staff have seen the article and mentioned it to you?

The WITNESS. Mentioned the article to me?

Mr. HORN. Yes, here is what the view of the Governor of Wisconsin is. Like the Minnesota area director called in and said, by the way, you ought to know.

The WITNESS. No. Me and the Minnesota area director didn't do that.

Mr. HORN. Guess you need a new staff if they're not keeping up on the newspapers.

EXAMINATION BY MR. WILSON:

Question. While we're waiting for the article, we have some great concern here that the Secretary of the Interior is representing that he knows something to be for a fact that's represented out in the newspapers and around the country that the Governor, the Republican Governor of the State of Wisconsin, was opposed to this, and he's representing that because it supports the denial of the application.

It is of some concern that the IGMS office appears not to have been following local newspaper coverage in Wisconsin at the time of the application process. Are you aware of any articles suggesting support or opposition to the dog track proposal involving the Governor?

Answer. I don't recall any such articles. An article in a newspaper would not be put into the record for us to consider. The Governor's position, it would have had to be in writing to the Department. What he says, what he is alleged to have said in the newspapers would not be the basis for us, for me, to form an opinion on what the Governor's position is on this.

In my June 29th memo, if we had on record the Governor's position one way or the other, certainly we would have discussed that.

Question. So the Secretary of the Interior's position in the newspaper, like we have discussed, is flat out wrong; is that correct?

Answer. I don't know. Maybe he knew independently on this matter. The only thing I can say is that I didn't—oh, you want me to read this?

Question. Oh, no, no, no. For the process, I marked it. It will go in the record.

Answer. I want to just say that I'm not going to, I'm not responding to what the Secretary said in this thing. Someone else can do that.

Question. No, I understand. I just merely introduced this because a representation was made on the record, and I'm not sure whether it's a correct representation or not.

Answer. A representation by me?

Question. No. For this matter, the Hudson Dog Track matter, we're looking at the record that has been produced by the Department of the Interior, and for representations to be made as a fact of something, as they are being made in newspaper articles or this deposition, when we don't have it in the record, it makes it more difficult for us to try to understand what happened, what was going on in Hudson and with the IGMS staff.

Mr. BALLEEN. For the record, Mr. Wilson, I asked the question were you aware of newspaper articles. I didn't represent anything, if that is what you are referring to.

Mr. HORN. Did you know that there was this referendum in Hudson that was mentioned in the article where there was a favorable vote by a margin of 63 votes?

The WITNESS. Yes, I'm aware of that.

Mr. HORN. You are aware of that?

The WITNESS. Yes.

Mr. HORN. Because that is conceivably the sentiment of the community by majority vote.

The WITNESS. Well, I considered a 63 vote majority to be certainly not overwhelming endorsement of a casino.

Mr. HORN. Does your manual say you need overwhelming endorsement?

The WITNESS. No, on 151 we don't have a manual that governed that. I think that would be my personal opinion. And if we're looking for a referendum that would show support, I think that, to me, this is almost 50-50. At least it shows that there is—

Mr. HORN. Do you believe in the majoritarian concept of our democracy?

The WITNESS. For purposes of?

Mr. HORN. For purposes of anything, where a political decision needs to be made.

The WITNESS. I think that in this particular case, this showed to me—it shows that there was substantial division on this issue at the time. In addition, I'm not sure that this was a referendum on the proposal that we had. This was a referendum on a previous proposal, and so it's—I don't think it's exactly the same sort of relevance.

Mr. HORN. But there was no other vote between December 1992 and the time you were considering this. So if you have not had another vote, and that's the only vote and a majority was for it, are you going to reject that when you look at community support or nonsupport?

The WITNESS. No, we would consider it. We would consider this.

Mr. HORN. But you wouldn't give it much credence, I guess.

The WITNESS. I think if it was—to me, to have a 63 vote majority indicates that the community was essentially split on this issue.

Mr. BALLEEN. In fact, Mr. Skibine, wasn't there a subsequent vote in '93 that you were aware of?

The WITNESS. That's what I'm saying.

Mr. BALLEEN. Where the community of Hudson overwhelmingly rejected it subsequent to this vote referred to in this article of '92?

The WITNESS. Right.

Mr. BALLEEN. And there was a vote of the city council as well?

The WITNESS. That is true, too, yes.

Mr. BALLEEN. And the mayor and the alderpersons?
The WITNESS. Right.

EXAMINATION BY MR. WILSON:

Question. Well, have you ever had discussions with Mr. Hartman about the results of this referendum?

Answer. Not that I can recall.

Question. Have you ever done any research or analysis on votes about gaming facilities? And I'm not trying to be mysterious here.

Answer. Oh, but you are. You are.

Question. No. I will tell you exactly what I'm going to get at here. There are many representations that in votes such as this, people who are opposed to something are much more motivated to turn out and vote, and people who are supportive of it are less motivated. And, consequently, a narrow victory might represent a much greater victory than on first paper. You are mentioning 63 votes has no great impact as far as you're concerned.

Mr. BALLEEN. Objection, that was not his testimony, that it had no great impact. That was not his testimony.

Mr. WILSON. Well, I should be more precise. He said he considered it to be tantamount to 50-50, and 50-50 is a dead tie.

EXAMINATION BY MR. WILSON:

Question. Did you ever think or consider that perhaps the fact that the margin of people that did turn out to support something of this type actually did have some great significance? Obviously, from your testimony, I think you did not.

Answer. No.

Question. You didn't do any sort of further analysis or consulting with other people to try to determine whether this vote actually did represent a considerable support of the track?

Answer. No, to me—what I said is on the record; right.

Mr. BALLEEN. I believe your testimony was you were also aware of the subsequent vote that was held in '93 which indicated the opposition at the time to the casino.

The WITNESS. That's right.

EXAMINATION BY MR. WILSON:

Question. It occurred to me, and it is a matter of some interest that we were discussing a little while ago, the representation on page 4 of the Hartman letter, and I would go back to the statement that somebody in the community wrote in support and states that the opposition to the acquisition was receiving money from opposing Indian tribes.

It is an interesting juxtaposition of these types of votes. There's an allegation that money is coming into the community. Did you ever stop and think that that allegation might have something to do with the local support?

Answer. No. With the referendum?

Question. (Nodding in the affirmative.)

Answer. No.

Question. I think we've already established that you never had anybody actually tally up the support and opposition from letters and petitions.

Answer. Right.

Question. I have actually done that, and I will represent this to you, and you don't have to agree with me, but there are dramatically more people supporting the Hudson Dog Track proposal in the record than are opposed to it. By a number of thousands. Would that surprise you?

Answer. Yes, it would.

Mr. BALLEEN. Are these letters that are being sent in from citizens; is that what you are talking about?

Mr. WILSON. Yes, letters and signature petitions.

Mr. BALLEEN. From in the area, out of the area, or from the tribe? Where are they coming from?

EXAMINATION BY MR. WILSON:

Question. Would it surprise you to learn that of the letters in the record, there are 71 letters in support of the—opposed to the dog track proposal and 69 letters against the proposal—supporting? Seventy-one letters opposed to the proposal, 69 letters in support of the proposal. Would that surprise you?

Mr. BALLEEN. But Mr. Wilson—I'm sorry, go ahead.

Mr. HORN. I'm confused. Which has the majority?

EXAMINATION BY MR. WILSON:

Question. Sorry. There are two more letters in the record of people opposed to the Hudson Dog Track application. So it is true there is a majority by two of people opposed to the application, but there are only 71 letters from people in Wisconsin. Seventy-one letters. Some by multiple signatures.

Answer. Sixty-nine in favor, if that's what you're saying. I don't know.

Mr. HORN. Well, did you divide, Counsel, which ones come from Wisconsin and which ones from Minnesota?

Mr. WILSON. Those are purely Wisconsin.

Mr. HORN. Those are purely Wisconsin. Seventy-one opposed, 69 in support. And, obviously, since that's a close margin, you don't believe in it, anyhow.

Mr. BALLEEN. I think, Mr. Wilson, wasn't it the opposite from what Mr. Horn said?

Mr. WILSON. There are two more letters——

Mr. HORN. Two more letters.

Mr. BALLEEN. Opposed than in favor.

Mr. HORN. I'm saying, since Mr. Skibine doesn't believe in majoritarian rule——

The WITNESS. Wait a minute. I'm not saying—I think that's a mischaracterization of my beliefs in general.

Mr. HORN. How do you make a judgment? Here you have 71 letters opposed. That supports your view.

The WITNESS. I just don't see your point, I'm sorry.

Mr. HORN. The point is, do you believe in majoritarian rule? You didn't think the referendum——

Mr. ELLIOTT. Mr. Horn, that is not the point, as to whether he believes in majority rule. That is not the basis on which he made his decision. He testified time and again today and before the Senate committee on how he made his recommendation. Wasn't even a decision.

And it was never until today, until the last few minutes, that anybody has asked him or accused him of nonbelief in the majoritarian rule. It has not entered into the process. He said that it was a close enough vote in the referendum that it did not sway it one way or the other.

Mr. HORN. So what swayed it?

The WITNESS. What swayed what?

Mr. HORN. What swayed your decision, if you didn't think much of the community's view?

The WITNESS. I did think much of the community's views. But I think what we relied on essentially is we gave—I gave a lot of credibility to the views of the elected officials, as I said before.

Mr. HORN. Isn't it a fact that no matter what question we raise, we're wasting our time because you were given an order as to how to come out on this?

The WITNESS. That is not true. That is not true. That is simply not true. You know, the only thing I can say is that I came up with my recommendation on June 29th. Those were my views at the time based on my examination of the record. If I was wrong, so be it.

You can disagree, and you have done that plenty of times today. Looking back, maybe we should have done it differently, and that can be true, too. But no one told me you are going to go and write this letter that way. That just didn't happen.

Mr. ELLIOTT. I would hope, Congressman, that if this committee has evidence of that, that they are prepared to bring it out, because that's—the very hint that a career civil servant or even a political civil servant is working in the Department of the Interior and might have made a decision based on direction without substantiation for it and, therefore, suborned their own integrity, runs the risk of ruining the representation of people like us. And I think that's patently unfair of you to make that kind of allegation on the record in this deposition, and I object to it.

Mr. HORN. Well, your objection is noted.

Mr. ELLIOTT. Thank you.

Mr. WILSON. I have no further questions for this round.

The WITNESS. You sound ominous. Like we're going 12 rounds here.

Mr. ELLIOTT. We haven't been already?

Mr. WILSON. We may.

Mr. BALLEEN. I'm going to need a break. Why don't we take 10 minutes.

[Brief Recess.]

EXAMINATION BY MR. BALEN:

Question. Well, good afternoon, Mr. Skibine. And from the Minority, we thank you for being here and for your patience through this process.

How long have you been at the Department of Interior now?

Answer. Twenty years.

Question. And as a career civil servant; Federal Government?

Answer. Yes, I am.

Question. And you have served under both Democrat and Republican administrations?

Answer. Yes, I have.

Question. And you have been involved with Indian gaming issues for several years during that tenure?

Answer. Yes, I have.

Question. And why did you join the Department of the Interior to work on Indian affairs?

Answer. Back in—I joined the Department back in 1977 because I was interested in Indian issues. And I was interested in Indian affairs because of my Indian heritage and I thought I would, could serve my country and my people by essentially performing work for the Indians at the Bureau of Indian Affairs at the time.

Question. And you have continued to stay there for 20 years?

Answer. In 1985, I joined the solicitor's office, as I stated before, and worked there in the division of Indian Affairs, and I returned to the Bureau in 1995.

Question. But throughout your tenure, both in the solicitor's office and the Bureau of Indian Affairs, it has been your motivation, your personal motivation, to serve your country and to serve American Indians?

Answer. Twenty years, yes, that's correct. I think you said 10 years.

Question. And you are there because you want to help?

Answer. That's correct. I'm certainly not there for the money that is offered civil servants.

Question. Has anyone ever questioned your integrity?

Answer. No.

Question. In the whole of your career?

Answer. No.

Question. Have you always based your decisions on the merits?

Answer. Yes. To the best that I can, yes, I have.

Question. And your motivation in your decisions, as much as possible, correct me if I'm wrong, but as much as possible, to the extent the law allows you, is to help the American Indian people? That's why you're there?

Answer. Yes. And as a Federal employee we, of course, serve the taxpayers of this country.

Question. You follow the law?

Answer. Right.

Question. You try to apply the law and give advice on the law to the best of your ability?

Answer. Yes.

Question. And throughout your 20-year career, no one has ever questioned, either publicly or privately, your integrity in applying the law and in performing your duties as a career civil servant?

Answer. That's correct. That's correct.

Question. So as the director of the Indian gaming staff, and you took over that duty in February of 1995, and were considering the Hudson matter up until July of '95, was your motivation, if you could, to help the three tribes that applied for this casino, if you felt that the casino would help them? You were not interested in denying them a priori off-reservation gaming; were you?

Answer. No.

Question. I mean, if there were a way to help these three applicant tribes involved in this matter, you would have done so?

Answer. Yes. In general, I support Indian gaming. And I think that part of our mission in the Indian gaming office and in the Bureau of Indian Affairs is to help tribes develop their reservation economies. So to the extent that we can, we try, and in pursuance of our trust responsibility to Indian tribes in general, we try to help them in that endeavor.

Question. So the reason that you made this decision in this matter not to recommend taking the land in trust for gaming purposes was not because you wanted to deny these three applicant tribes a chance at off-reservation gaming, but because you felt under the law and under the facts presented to you that you could not do so. Would that be a fair statement?

Answer. That's right. My recommendation at the time, based on the record, was that I was not prepared to recommend to the Secretary or to the Deputy Assistant Secretary that, given this record, it was a good idea to exercise his discretionary authority to take the land into trust.

Question. And I'm trying to understand, sir, your motivations in making that kind of recommendation. It was not that you weren't desirous of helping these tribes gain off-reservation gaming or increasing their economic development. You would have been happy coming out the other way, if you could have. Would that be a fair statement?

Answer. That's correct.

Question. In fact, that's why you're at the Bureau of Indian Affairs. That is the mission of the Bureau of Indian Affairs, is to help American Indians?

Answer. It's the mission to help—yes, you can state that broadly, yes.

Question. So based on the facts, and the facts alone in this matter, not on any pressure, not on any influence, you made a decision that you thought was the right one at the time?

Answer. That was my opinion at the time.

Question. Sir, since you have been involved in these issues for a long time, is it your experience that generally the area offices support most, if not all, tribal applications that are forwarded to Washington?

Answer. My experience is that the area offices do support the ones that are forwarded to Washington, yes.

Question. Does the Indian Gaming Management Staff always concur with the area office recommendation?

Answer. No, not always.

Question. So it's not unusual, particularly for your staff, to deny a tribal request even though it was supported by the BIA area office?

Answer. It's not unusual. We've only nine other instances besides the Hudson Dog Track, and I think some goes in favor, some goes against.

Question. It is the Washington office, though, and not the BIA area office, that makes the final determination on these applications; isn't that correct?

Answer. That's correct.

Question. Wasn't it during Secretary Lujan and the Bush administration that the policy was enunciated in 1990 that these decisions on casino applications were to be made in Washington, the central office, rather than at the area office?

Answer. That's correct, yes.

Question. Now, dealing with those precedents, isn't it true that in the case of the—well, let me just ask you the question. Have any off-reservation casino applications, to your knowledge, been approved?

Answer. Yes. As I testified before, I think there have been, yes.

Question. Did they have the support of the local community or the opposition of the local community?

Answer. We would have to look at the record. I think that the, in the case of the Forest County Potawatomi acquisition in the city of Milwaukee, the community was in favor of that acquisition. In the case of the determination under section 20, and in the case of a proposed acquisition in Detroit by the Sault Ste. Marie Tribe in Michigan, my recollection is that the community was in favor of that application, too.

Question. Isn't it a fact that Mayor Dennis Archer supported that application; do you recall?

Answer. Yes, from what I recall. That occurred, though, before I joined the office, so, I'm sorry.

Question. So you would agree that an important distinction between the Hudson casino and the one in Detroit would be the support of the mayor in the Detroit community for that as opposed to the Hudson case where the mayor did not support it?

Answer. That's correct, yes.

Question. Sir, you testified that you gave deference to locally elected officials.

Answer. That's correct.

Question. And their judgments in this matter.

Answer. Yes.

Question. Did you think it your role as a career civil servant working for the United States Government to substitute your own judgment as to the views of the community in place of the locally and democratically elected officials?

Answer. No, not under—when we considered the application under the discretionary authority of the Secretary and the regulations in 151. I think that the fact that there was opposition by the local community in and of itself was an important

factor for the Secretary to decide that this is neither the time nor the place to take land into trust.

Question. I understand that, but let me ask the question slightly differently. Did you think it your job, sir, to find out why or to question the motives of the mayor of the city council, of the town of Troy, or the county supervisors, or the State representatives, or the other people that went on record opposing this? Do you think it was your job to question which campaign contributions they got or why they were making these decisions?

Answer. No, definitely not. No.

Question. It was not your job as a Federal bureaucrat to substitute your judgment as to why they were opposing this for their judgment?

Answer. That's correct.

Question. And was it not a fact, sir, that the Hudson application was denied because of this community opposition?

Answer. Yes, that is true.

Question. And this wasn't an opposition that was simply based on racism or prejudice towards Indians, was it?

Answer. No, that is not what the record indicates.

Question. Does the record indicate there was substantial documented opposition from the community?

Answer. There was the documented opposition.

Question. Did the city council pass a resolution opposing the casino?

Answer. Yes, they did.

Question. Did you receive a letter dated April 25, 1995, signed by the mayor of Hudson and board district alderman which said they believed the casino would be detrimental to the City of Hudson?

Answer. April 25?

Question. I believe that is the date, sir.

Answer. You would have to show me the letter for me to be sure I received it.

Question. Do you remember getting a letter to that effect, sir?

Answer. We received a resolution, I think that that is listed in my June 29, 1995 letter. You would have to—if you can show me the letter. If it is in the record, then we received it, let me put it that way.

Mr. WILSON. I probably sat through 25 depositions and when I asked a question like that, I had a request to refurnish the letter. So I will make that same request. Could you please provide the letter for us so we can have it in front of us.

Question. I don't have a copy of the letter.

EXAMINATION BY MR. BALLENGER:

Question. Do you recall receiving the letter?

Answer. Well, you know, since I am under oath here, I want to be able to—Mr. WILSON. I think he testified he doesn't recall receiving the letter.

Answer. If it is in the record, then, of course, I would be able to see it.

EXAMINATION BY MR. BALLENGER:

Question. Were concerns expressed by the local community and the mayor and others, including actual detriment such as increased cost to law enforcement, waste water treatment and problems with solid waste?

Answer. Yes, from what I recall, yes.

Question. Do you think these were legitimate concerns?

Answer. Yes, they are legitimate concerns.

Question. Would you consider these detriments to the community?

Answer. They are detriments that I considered in writing my recommendation to decline under section 151.

Question. Did the Town of Troy also pass a resolution opposing the casino?

Answer. Yes, it did.

Question. Do you recall receiving letters from elected representatives, including former Representative Steve Gunderson, you have been shown a copy of that, who represented the district, and the local state representative, Sheila Harsdorf?

Answer. Yes, I do.

Question. Do you recall receiving a letter opposing the casino from the local business community?

Answer. Yes, I do.

Question. Could you tell us about that, what you recall?

Answer. Let me look at it. I think I have it here somewhere. It was an open letter to U.S. Secretary of Interior, Bruce Babbitt, Wisconsin Governor Tommy Thompson and Hudson Mayor Jack Brould, and I recall receiving this letter, and in it, I don't

know if you want me to describe to you what it says, it says a casino would adversely affect the quality of life in Hudson, et cetera.

It's fairly lengthy, and I notice that my eyesight declines as I am getting to my mid-forties and I probably should have brought a magnifying glass.

Question. We won't put you through that exercise.

Mr. WILSON. I apologize, but so I can come back and refer to that letter, which letter is that, a letter from.

Answer. That letter is in the record.

Mr. WILSON. All right, fine.

EXAMINATION BY MR. BALEN:

Question. Sir, was the fact that the Hudson casino was going to be located at least 85 miles from the nearest applicant Indian reservation a factor in your decision on Hudson?

Answer. The what?

Question. The distance, in other words.

Answer. Distance was a factor in the July 14, 1995 letter that went out.

Question. And would the fact that the opposition of the nearest tribe, the St. Croix Tribe, within a 50-mile radius, was that something that was considered by you in your decision?

Answer. It was considered by me in my decision, yes.

Question. Now, we discussed this earlier, in part, but this was not a formal rule-making procedure, was it?

Answer. No, it was not.

Question. Or a formal adjudicative or administrative proceeding under the Administrative Procedures Act?

Answer. That's right.

Question. Did both the proponents and opponents of the proposed casino have an opportunity to submit their views for the record, until a final decision was made?

Answer. Yes, they did.

Question. Did you send letters giving them an opportunity to do so with a date to both sides?

Answer. We sent letters to both sides stating that additional comments would be received until April 30th, 1995.

Question. Did the applicant tribes get an opportunity to make their case to interior? Did you ever meet with them?

Answer. We met with them on several occasions where the purpose of their meeting was to try to discuss the merits of their application, and I think that we were given access to the additional comments that were filed between February 8 and April 30, 1995, and I think they submitted something in writing at some point.

Question. Did environmental concerns factor into your decision?

Answer. Yes, to the extent that my environmental specialist determined that there was improper compliance with NEPA, and to the effect that he also determined that the environmental documentation did not take into account the proximity of the St. Croix River Waterway to the proposed casino.

Question. Now, the St. Croix River Waterway was a national scenic riverway, is that right?

Answer. That is correct.

Question. Was there concern about the potential threat to the St. Croix National Scenic Riverway?

Answer. To the proximity of the casino to the riverway, yes.

Question. Why, because of increased traffic?

Answer. I have to look back into the records where the documentation was submitted.

Question. But this is something one of your staff members looked at?

Answer. Yes, that's right.

Question. And concluded that this was a legitimate concern?

Answer. Right.

Question. Now, putting aside the detriment community opposition, was there any discussion in your office whether the Hudson proposal was in the best interest of the applicant tribes?

Answer. Yes, there was discussion about this issue.

Question. Was your staff convinced that the proposal was in the best interest of the applicant tribes?

Answer. No.

Question. Why not?

Answer. Well, I think that the preliminary analysis by the staff in January of '95 indicated that some staff had serious concerns with the terms of the deal that was offered by Galaxy Gaming to the three tribes.

Question. Tell us about that a little bit. Were there concerns about the proposed lease arrangement on an adjacent parking lot?

Answer. Yes, there were. However, I didn't really personally go into great detail on this issue because I never really reached it.

Question. Did Mr. Hartman have those concerns?

Answer. Yes, that's right.

Question. So even when he did not have concerns about the community detriment, he did have concerns about whether or not this was in the best interest of the applicant tribes?

Answer. That's correct. That is right.

Question. And that was based upon how much lease payment--what was it, \$1 million they would have to pay?

Answer. I don't recall specifically. I think we had a real problem with the parking lot arrangement and the payments on the parking lot arrangement, and we had some problems, I recall, with the fact that Galaxy Gaming was retaining ownership of the land that was surrounding the casino, so we were really concerned that if they were out of the deal then they could essentially block access, and that was a concern that we had.

Question. Let me ask you this. There has been a lot of discussion here this afternoon and throughout this issue about section 20 or 151 or the basis or who did what or who wrote what. Was there any person on your staff, on the Indian Gaming Management staff who thought this was a good application to approve, that it should be approved?

Answer. No.

Question. So the bottom line is there was no one who looked at this among the career civil servants at the Bureau of Indian Affairs, including yourself, or the Deputy Commissioner, who is also a career servant, who felt that this was appropriate for the applicant tribes, that this should be approved?

Answer. No. In totality, I think no one was prepared to say that we should go ahead with this proposed application.

Question. I have no further questions at this time.

EXAMINATION BY MR. WILSON:

Question. Well, I only had 124 questions, but, unfortunately, they have grown.

Answer. Excuse me?

Question. I said I only had 124 questions, but, unfortunately they grew by about ten?

Answer. You have 124 more questions?

Question. At a minimum.

Mr. HORN. That's Congressional humor.

Mr. WILSON. Unfortunately, it isn't.

The WITNESS. It is torture, in that case.

EXAMINATION BY MR. WILSON:

Question. Mr. Ballen made the point that your mission was to help Indians and was trying to make the inference that you were--your goal was to benefit the three tribes who applied for the Hudson Dog Track application. Is it true that the denial of the application benefited Indians?

Answer. In the sense that the denial of the application was opposed by the St. Croix Tribe and other tribes in Wisconsin and Minnesota, they would look at it benefiting them, yes.

Question. Well, they asked you to do something and you did what they asked you to do, is that correct?

Answer. That is correct.

Question. So, in layman's terms, that is a benefit to them, correct?

Answer. You could look at it that way, yes.

Question. And they are the tribes that are much wealthier than the three poor Chippewa tribes that are applying for the application, is that correct?

Answer. I am not sure about the wealth factor here. Certainly the Shakopee are, others I am not sure.

Question. So just to recapitulate, so you never made a determination of the wealth of the opponent tribes?

Answer. No.

Question. And you never made a determination of the wealth of the applicant tribes?

Answer. That's right.

Question. Okay. You stated a moment ago that you didn't think it was your job to question the mayor of the Town of Hudson. Is it true that a mayor of Hudson supported the application? Is it true Mayor Redner wrote letters that are in the record supporting the application?

Answer. Yes, I think so. I have a vague recollection. If you can show me the document once again, that would be helpful.

Mr. BALLEEN. Wasn't it a fact that he was recalled after he supported that?

The WITNESS. These are details I don't remember.

EXAMINATION BY MR. WILSON:

Question. Okay. We discussed just a moment ago the increased cost of law enforcement, and you were asked whether that was a legitimate concern, and you said yes, is that correct?

Answer. That is what I said?

Question. Yes.

Answer. Yes.

Question. Did you ever discuss with the community whether law enforcement would cost more if the casino proposal were approved?

Answer. Did I discuss that with the community personally, no.

Question. Did you ever discuss with the applicant tribes whether they would mitigate the additional cost of law enforcement, if indeed it was found that there would be additional costs?

Answer. I don't recall that.

Question. Now, do you consider it to be a matter of basic fairness that if you are going to say that you based your decision on something like the increased cost of law enforcement, that you would have given the applicants an opportunity to cure what you perceived to be a defect?

Answer. I think we covered this at length previously, and I think that the applicants had the opportunity to cure it, they could resubmit an application, they could ask for reconsideration, they could show that they were going to cure that.

Question. But prior to the rejection of the application. That is the easy way to do it, to tell people in advance what the problems are and let them cure them?

Answer. Yes, we could have done that. That is not the way I did the first application. That is not the way we did it at this point.

Question. Now, we discussed the letter, the open letter, and there is the mention of health and development of children potentially would be impacted negatively by the application being approved, is that correct, you read that from the letter?

Answer. Yes, that is right.

Question. Do you know whether the school board approved the application to take land into trust for the casino by the three tribes?

Answer. I don't recall that, no.

Question. Would that have had a bearing, perhaps the school board having some interest in the health and welfare of children?

Answer. Yes, I think that a school board in Hudson would be one of the government organizations that we would look at.

Question. Now, is that the sort of thing you should have known at the time or did know at the time?

Answer. I should have known at the time.

Question. Now, just asking you now, which would you accord greater weight to, a school board representation or an open letter by some businesspeople about schoolchildren, about health and school, health and development of children?

Answer. Well, that is speculative. I mean, you can ask me now, but at the time it is speculation.

Question. You stated you sent letters to both tribes regarding additional comments. My understanding was, from what you have said today, that the opening of the comment period, the reopening of the comment period came at the time of the February 8 meeting with the Minnesota Congressional delegation, is that correct?

Answer. That is correct.

Question. When were the applicant tribes—

Answer. It was an opportunity to submit additional comments.

Question. Was there a representation by Mr. Duffy that additional material would be allowed into the record at that time?

Answer. Yes.

Mr. BALLEEN. Was there an official comment period that had to be reopened? The question implies there was.

The WITNESS. Well, because this is informal, technically, there is no legal requirement for that to happen, and that is why we can communicate with anybody, you know, that would be necessary concerning the record, and I think the issue was actually litigated in the Hudson Dog Track litigation. But what we did do is send a letter in March telling the three tribes and telling the—I think the tribes who were present and the Congressmen who were present at a February 8 meeting that we would entertain comments until April 30, 1995, and the reason we did that is because we wanted to—I think at a February 8 meeting, there was no deadline given, and after thinking about it, I certainly thought that that could go on forever, unless we essentially said until when we are willing to consider comments in order to make a final decision.

EXAMINATION BY MR. WILSON:

Question. Is it true there was a deadline for the consultation period at the area office level?

Answer. I think so, I think that the area office gave the tribe 30 or 60 days in which to comment. I don't recall exactly.

Question. And you mentioned that your view was for putting a deadline on this, you didn't want the process to go on forever. Is the reason for having a deadline at the local office that the process would not go on forever? I mean, if there is a consultation period at the local office and there is a deadline, presumably there is a reason for having a deadline, so the period doesn't go on forever?

Answer. The consultation period, the official consultation period, I think they are given 30 days to consult, if necessary, but that is to give structure to the decision-making process, and I did the same thing after Mr. Duffy agreed to take in additional comments. I felt that we couldn't wait forever on this, so I think that was my—I think it was good that we put it in.

Question. So Mr. Duffy made a decision that the previous consultation period was inadequate, at the February 8 meeting with the Minnesota delegation, is that correct?

Answer. Well, he made a decision to allow additional comments. I mean, I don't want to speculate on this basis.

Question. Okay. You mentioned the letters were sent to both tribes regarding additional comments. When did the letter to the applicant tribes go out?

Answer. I think they went out on March 27, 1995.

Question. On what?

Answer. March 27.

Question. March 27. And Mr. Duffy agreed to allow information into the record on February 8 of 1995, is that correct?

Answer. That is correct.

Question. So Mr. Duffy of the Minnesota delegation agreed in early February and it took until March 27 for you to send a letter out. Why was there a delay of that amount of time?

Answer. I think that was asked in my previous deposition, and from what I recall, I was new at the job at that time, and I was also involved in other matters, which took a lot of my time, and just in learning the process and figuring out what needed to be done. By the time I became more focused, you know, I think it took me a while to essentially realize that we needed to do that.

Question. So in effect you gave the opponents a six and a half week jump on the process?

Answer. In effect, yes. I think that the letter should have gone out sooner.

Mr. BALLEEN. Let me ask you this—

Mr. WILSON. Well, let me ask.

EXAMINATION BY MR. WILSON:

Question. People were conferring with people of the Department of the Interior were not being told there was an opening of the comment period, is that correct? Were there any consultations between February and March 27, where applicant tribes were asking how the process was going and they simply weren't being told?

Answer. I don't know if they asked. If they did ask, then we would have told them that this decision had been made, and they may very well have asked and we may very well have told them. I don't have a specific recollection of that.

EXAMINATION BY MR. BALLENG:

Question. In fact, though, by putting a deadline on it, on the end of the comment period and letting applicant tribes know, that would favor the applicant tribes, would it not, because to leave no deadline on it would have favored the opponents of this so they could drag it out and then there would be no decision?

Answer. That is correct, yes.

Question. So let me ask you, was that one of your reasons for putting it in?

Answer. That was the reason for putting it in. My feeling was that the opposing tribes would have been happy if this thing stayed in limbo as long as possible.

EXAMINATION BY MR. WILSON:

Question. To me it seems like a somewhat tortured explanation unfair to the tribes if in a secret meeting not attended by applicant tribes there is a decision made to reopen a comment period, a six and a half week period during which the applicant tribes are not informed of that comment period and then there is a period of approximately 4 weeks during which time there can be some comment from the applicant tribes.

Do you know, between March 27 and April 30, were any of the specific articulated concerns of the opponents, the types of concerns that were identified in the February meeting, were they articulated to the applicant tribes during that time period?

Answer. Let me clarify. This was not a secret meeting that was on February the 8th.

Question. So the applicant tribes were given an opportunity to attend the meeting?

Answer. No, they were not given an opportunity to attend the meeting, but it was not a secret.

Question. Were they notified of the meeting?

Answer. I don't know. I don't think so, but I came on the job on February 5th.

EXAMINATION BY MR. BALLENG:

Question. Did you have meetings with the applicant tribes as well?

Answer. We did have meetings.

Question. Were the opposing tribes invited to those meetings?

Answer. No.

Question. So not every meeting you tried to include every pro and con position? *Answer.* No, in fact, we generally don't do that, we meet with people who ask to meet with us, but I think if we had a meeting, frankly, with both parties, it would be probably very unproductive. It's like if—well, I am sure that happens on the Hill all the time.

Mr. BALLENG. Not up here, never, right, Mr. Horn?

EXAMINATION BY MR. WILSON:

Question. In your previous employment, had you ever had occasion to come to meetings with Congressmen on Capitol Hill?

Answer. My previous employment?

Question. Anything prior to February of 1995?

Answer. I don't recall any such meetings.

Question. So in your first week at your new job, you went to a meeting with a number of Congressmen with the Counselor to the Secretary of the Interior, is that correct?

Answer. That is correct.

Question. Was it clear from the meeting where Mr. Duffy stood?

Answer. The only thing he committed to is to allow the opportunity for additional comments. It was clear that he agreed to do that.

Question. What did he say when you road back in the taxi or some sort of transportation? Did he say we have to help these people?

Answer. No, there was no discussion like that. I am not sure I even road back with him.

Question. Were the Minnesota press covering that meeting, were they waiting outside for it to break up and ask everybody some questions?

Answer. No, I don't recall that. Did you depose Mr. Duffy?

Question. I don't know.

Answer. These are questions for him.

Question. To be perfectly honest, I don't know if it is appropriate to disclose that. I don't mean to be cagey about it.

Mr. Ballen brought up some questions that addressed the best interest prong of the tribe, and I assume by that we are thinking about the best interest prong of the IGRA section 20 test, and you said that some of the staff had concerns with the deal. But it is my understanding that you never completed an analysis of the best interest test for tribes?

Answer. Personally I did not, that is correct.

Question. So it is an unknown as to whether ultimately a conclusion would have been that it was in the best interest of the tribe or would not have been in the best interest of the tribe to complete this deal, is that correct?

Answer. Technically that is correct, yes.

Question. And more than technically correct, it is literally correct?

Answer. There were preliminary drafts that Tom Hartman and others worked in January on, on preparing a draft, but I never reviewed that draft, so for purposes of myself, as the Gaming Director, it would be premature for me to make a conclusion regarding this issue.

Question. So, I mean, there had been no decision made on that, whether it was in the best interest or not because we never got to part of the analysis?

Answer. I never got to that, yes.

Question. Now one of the last questions of Mr. Ballen that I wanted to address, there was discussion of whether there was any person on the staff who had thought it was a good application. That is kind of a delicate question in that if staff members are working for the best interests of all people concerned with the issue, they would have concerns right up until the very time the deal is consummated, but is it true that—are you representing to us today that all staff members had come to a definitive conclusion that this deal was not in the best interest of Chippewa applicants?

Answer. We would have to go back to exactly what was said. I think no one on my staff recommended that this deal go through, there was no recommendation by anyone on the staff to say let's approve under 151 and under section 20.

Question. But that is not the same thing as saying they were all opposed to this?

Answer. I don't think I said that.

Question. No, but the Secretary of the Interior recently made that representation, so I am trying to find out?

Answer. I was just answering the question for Minority.

Question. I think I may have covered this, but you indicated that all the material you used to make your recommendation is contained in the record, is that correct?

Answer. That is correct.

Question. So did you rely on any material that is not written to make your decision?

Answer. Only oral remarks. You know, we had meetings with the applicant tribes, we had internal meetings, so I knew the position of other Interior employees. So besides oral communication, that is it, right.

Question. The February 8, 1995 meeting, who asked you to attend that meeting?

Answer. The February, 1995 meeting, I was contacted by the Secretary's Office and asked to attend and join Mr. Duffy.

Question. And who in the Secretary's Office contacted you?

Answer. I don't recall. It could have been his secretary. That I don't remember.

Question. And when you say secretary, are you referring to—

Answer. His secretary.

Question. A secretary, secretary?

Answer. Mr. Duffy's secretary.

Question. Okay.

Answer. Not the Secretary of the Interior.

Question. Is that Heather, his assistant?

Answer. No, it would have been—I can't remember her name right now, an Assistant Secretary type.

Question. Was the purpose of the meeting explained to you at that time?

Answer. No.

Question. Did you prepare in any way to attend that meeting?

Answer. No, I did not.

Question. Did you know what the meeting was going to be about?

Answer. I think I was told it was to meet with congressional representatives concerning the dog track application.

Question. And your recollection of—what is your recollection of who was there, who was there?

Answer. Well, I covered that in my previous deposition, and I said then that present at the meeting were the Minnesota congressional delegation, a number of tribal chairmen, including the chairman of the St. Croix Tribe and the chairman of the Shakopee Tribe, maybe a couple others, and a number of congressional aides,

whom I do not recall their names, and there were a number of attorneys and lobbyists for the Minnesota and Wisconsin tribes present at that meeting.

Question. Okay. And who was the chairman of the St. Croix Tribe at that time?

Answer. Lewis Taylor.

Question. And who was the chairman of the Shakopee Tribe at that time?

Answer. I believe it was a Mr. Crook.

Question. And who were the lobbyists in attendance?

Answer. You know, in the record of my notes, there was a memorandum sent to me from Whelan Peterson, with Representative Oberstar, saying the following people attended the meeting on February 8.

EXAMINATION BY MR. BALLENGER:

Question. Sir, you are reading from the memorandum, but do you have an independent recollection of who was at the meeting that you can provide us? Now you are just reading.

Answer. No, this is essentially, I got this, and my recollection would be based on this memo.

Question. But you don't have an independent recollection?

Answer. It would be so colored by what this essentially says that I cannot say that I have an independent recollection of who was at the meeting. I think even the names of the Congressmen, except for Oberstar and Wellstone, would have escaped me, but I think they were made clear on this memo and essentially that is how it helped me to remember who was allegedly at this meeting. So if I look at some of the names here—

Question. But that is what someone else represented to you, who was at the meeting, but not what you recall necessarily?

Answer. That is right, yes.

Question. You said lobbyists were there. What does the memo say, which lobbyists were there?

Answer. I will read from this memorandum from Whelan Peterson.

Question. Do you know who Whelan Peterson is?

Answer. I don't remember. He is with Representative Oberstar. That is the only thing it says. So if you want, I can read the whole list.

Question. Please do.

Answer. James Oberstar, Bruce Vento, David Minge, Senator Paul Wellstone, Representative Bill Luther, MIGA Chairman Myron Ellis, Mill Dock, Melanie Benjamin, Tad Johnson from Well Fort, John McCarthy from Meech Lake, Stan Crooks, Jeanie Bowlin, Kurt Bluedog of St. Croix, Lewis Taylor, Larry Kido, staff person or lobbyist Whelan Peterson, James McKinney, John Schaefer, Mike Epstein.

Question. Now, the word "lobbyist" I think was used?

Answer. Yes.

Question. Are they the last ones there you noted or did they identify them?

Answer. Oh, I missed something, Frank Ducheneaux. Thank you very much. Well, they are either lobbyists or tribal attorneys.

Question. Were they Washington based or Minnesota based?

Answer. Looking at this list, Jeanie Bowlin and Frank Ducheneaux are Washington based, Kurt Bluedog is Minnesota based, Tad Johnson I think at the time was Minnesota based, and I don't know the other personally.

EXAMINATION BY MR. WILSON:

Question. Do you recall during your meeting with the Minnesota delegation, did the name of the company Delaware North ever come up?

Answer. I don't recall that it came up.

Question. Do you know the name Delaware North?

Answer. I know it because I think I read some newspaper article a while back concerning allegations about Delaware North ownership of the dog track, in a newspaper that came to our office.

Question. Okay. Did you look into those allegations?

Answer. That was way after the end of the consideration of the dog track acquisition.

EXAMINATION BY MR. WILSON:

Question. I have a methodological question. We have reviewed many documents and there were many assertions by opponents of the dog track that the application was going to have Mafia ties through the Delaware North Corporation. You have relied on people writing letters in opposition. Would it be a problem in your reliance

if they were thinking this is a bad deal because the Mafia might be coming to Hudson, Wisconsin?

Answer. I don't think that is in the record, I don't think that indication is in the record.

Question. You testified you don't really make much of an effort to go behind the rationales advanced by opponents if people were relying on information that this was a mob-backed deal that potentially might have influenced many of the people who opposed this application, is that something that, if it were untrue, would you consider that unfortunate.

Mr. BALLEEN. That is not the record.

Mr. ELLIOTT. That is not the case here, sir.

Mr. WILSON. I am asking what he thinks as a public servant.

The WITNESS. So repeat that. I don't want to answer into speculations here on this issue. It just was not in the record. I just don't see. Are you asking a hypothetical question?

Mr. BALLEEN. It wasn't on the record when you were considering this matter?

The WITNESS. That is right.

EXAMINATION BY MR. WILSON:

Question. But if you were to learn now that the rationale for many people opposing the application was they thought that the mob was coming to Hudson, Wisconsin, because of representations of lobbyists who are going around trying to get people excited about opposing the application, would that be of interest to you?

Mr. BALLEEN. Excuse me, I am going to object to the question. I take it here the purpose of the committee's investigation is not to reverse either the Department of Interior's decision on this matter or to take a side in the ongoing litigation that is occurring. And by asking these kind of hypothetical questions that go to the decision, it seems to me that it indicates that is the direction you want to take, and I thought we were here to determine if there was any improper influence brought to bear on this official in the Department of Interior's matter, not to revisit the decision that is right or wrong or to take a particular side in the litigation that is now ongoing between the Wisconsin tribes and the Department of Interior, right or wrong.

Mr. WILSON. That is fair enough, and we won't pursue this too much longer, but one of the principal concerns here is whether or not decisionmakers at the Department of the Interior, and we will talk to other ones at future dates, made an effort to get underneath the prima facie representations of opposition, to find out why they made the representations of opposition, and you testified you did not go behind the representations of opposition—

Mr. HORN. Counsel, I would like to add, did you ever talk to your predecessors in your job and get advice?

The WITNESS. I talked to Hilda Manuel, the deputy commissioner, who wasn't a predecessor on the job.

Mr. HORN. My question to you would be simply—it has nothing to do with this case, it has to do with what is the role of the civil servant, who is trying to be faithful to the trust imposed upon him. If you had any application for gaming, I would think it is a legitimate question to ask, given the involvement of the mob with gambling in the United States, illegal and legal, although Nevada tries to control it pretty well, to pick up the phone, call the FBI and say, hey, how about a little advice, do you know anything about this thing in this town or that town. I think that would be what I would do if I was in your place. Now, do you feel that is what you should do?

The WITNESS. In general, when there is an application like this one I think that that role is fulfilled by the National Indian Gaming Commission, who have the responsibility to approve the contract, and I think they look at the background of all the employees and they give us the information that they find. When we make a determination of whether the gaming establishment is in the best interest of the tribe, we definitely look at this issue, and the NIGC looks at this issue and we work closely with them, so there is a consideration before an application is finally approved that it will be investigated, not by us, because we don't have the background in law enforcement, but it is done by the National Indian Gaming Commission.

Mr. HORN. And you are satisfied with their number of investigators and that they have the resources to actually do this job?

The WITNESS. The National Indian Gaming Commission?

Mr. HORN. Yes.

Mr. ELLIOTT. That is not his responsibility.

Mr. HORN. No, I understand, but responsible civil servants also ask questions.

Mr. ELLIOTT. But you are asking him if he is satisfied they have enough resources.

Mr. HORN. It is a judgment you can make if they say sorry, we can't tell you something. I don't know what your communication is with them or what theirs are with you. I have had many a bureaucracy tell me we can't look into that, we don't have any staffing, or they make a plea for staffing by sitting on stuff and then getting a Member of Congress excited enough to get them more staffing if they need it, so I think it is a legitimate question.

Do you get any feeling in your contacts with the National Indian Gaming Commission that they are sufficiently staffed to do the job that they are expected to do in their advice to you?

The WITNESS. I think they are. I think that they also have the FBI conduct the—

Mr. HORN. So they can draw on them?

The WITNESS. Right.

Mr. HORN. And they combine that information and give it to you?

The WITNESS. That's right.

Mr. HORN. Is that true on every application or just some?

The WITNESS. It is true if the National Indian Gaming Commission is involved, if there is a management contractor. It would have been true in the Hudson case.

Mr. HORN. Were they involved in the Hudson case?

The WITNESS. Yes, I think they were.

EXAMINATION BY MR. WILSON:

Question. During the February 8, 1995, meeting when Mr. Duffy agreed to accept additional information for consultation, did he ask why the material was coming at that particular time?

Answer. I don't remember him asking that.

Question. Did he ask the people who were proposing to submit the additional information whether they had made an attempt to submit that information at a previous time?

Answer. I don't remember him asking that question.

Question. Did he ask you, as the senior IGNS official, whether it was appropriate to have an additional comment period?

Answer. No, I don't remember. I think he looked at me and I didn't have any objections at the time. As I said, it was my third day on the job, I was not familiar with the record, and it took me a while to become familiar with the process.

Mr. BALLEEN. Was it an additional comment period or was it just allowing people more time to submit comments?

The WITNESS. That is right, it was permission to submit more comments.

Mr. BALLEEN. You did not have an initial comment period whose time had expired and reopened it and allowed an additional comment period?

The WITNESS. I think, as was pointed out by counsel here, the Minneapolis area director gave the tribes a 30-day comment period, so, technically, that comment period had closed. The Minnesota tribes and opposing tribes in Wisconsin obviously thought that they should be asking for permission to submit additional comments.

Mr. BALLEEN. But did the central office, on its decision-making calendar, set up a comment period that was being extended or reopened—well, did you have a comment period in the central office?

The WITNESS. No. No, we didn't.

EXAMINATION BY MR. WILSON:

Question. But, I mean, the fact remains, there was a consultation period with a beginning and an end already, and that end had already come and gone, and so the people that thought they were playing by the rules, as the rules were defined by the area office, were suddenly confronted with a new period during which information was being considered.

Let me ask you this, did you ever send back the material that you accumulated during that second comment period to the area office for their views on what it meant, seeing as they had analyzed the information in the first place?

Answer. We did not.

Question. Did you ever discuss doing that?

Answer. No, we did not.

Question. Now, given that they had been the ones that had prepared written reports, written analyses of all the material that had come in during the first properly constituted comment period, did you think that their views might be valuable to shed insight on to both reasons for and reasons against the proposal?

Answer. I didn't think so at the time.

Question. Is it fair to say that you thought that the recommendations of the local office were worthless?

Answer. No, that is not true.

Question. Then why did you not send the information back to the area office for their additional comment?

Answer. We just didn't, in this particular case. It is not something that I considered. In that particular case, as I said, it was my first case on this issue, and it was—we decided that we—we assumed we were going to handle this at the central office in this particular case.

Question. How long had Ms. Homer been on the job as the director of the area office in Minneapolis?

Answer. I don't remember.

Question. Would you hazard a guess of more than 3 days?

Answer. Well, of course.

Question. Okay. And you are representing to us that it did not occur to you to send some of this new information on to her to allow her and her staff, who had already done an analysis of the information, to try and fit it into the big picture?

Answer. That is right, we didn't do that.

Question. Okay.

EXAMINATION BY MR. BALEN:

Question. Wasn't the directive from Secretary Lujan still in force in 1990, that this was a central office decision?

Answer. The final decision would have to be made by central office, and I think that counsel says would it have been a good idea to send the application back.

Question. Well, there are a lot of good ideas in the world but the decision was yours and you made it.

Let me ask you this because counsel said that some people played by the rules and others did not. Did the applicant tribes ever contact your office after the comment period closed at the area office? Did you ever have any contact with the applicant tribes after that?

Answer. Yes, we did.

Question. So it wasn't exclusively those in opposition to the proposed casino that were in contact with you and your office?

Answer. That is right, yes. And I think the court indicated there was nothing wrong with that.

Mr. HORN. Were those applicant tribes in contact with the Secretary and the Secretary's immediate office advisors, to your knowledge?

The WITNESS. I think there were contacts with the Secretary's office in meetings, but you would have to ask the Secretary's office that.

Mr. HORN. I was remiss in not asking you, at what point in the process does the National Indian Gaming Commission report come to you in any of these applications? Where does it fit in in your review?

The WITNESS. Well, essentially, what the tribes do is work with the National Indian Gaming Commission parallel with us. I think at the time they had the National Indian Gaming Commission backlog on approving contracts, it was in the interest of the tribes to contact them soon to make sure that they did their work.

In general, we try to work together to consult with the National Indian Gaming Commission to coordinate our activities. A lot of the tribes who have—like in this case, who have a sponsor or a management company, who is essentially driving the deal. If the management contract does not get approved, then they are not going to pursue the application, so it is important that this proceed at the same pace.

Mr. HORN. Parallel to it?

The WITNESS. Parallel to it, yes.

Mr. HORN. Does that mean the area director also looks to the gaming commission for advice as they go through their review?

The WITNESS. Yes.

Mr. HORN. So you have a continuum, almost from the time they deal with the area director into your show?

The WITNESS. Right. In fact, I think that if the management contract involves construction, then there has to be NEPA compliance with the National Indian Gaming Commission, and NIGC then wants to be involved at the very beginning of that process and works with the BIA as a cooperating agency on NEPA matters, in terms of making sure the environmental documentation is submitted and reviewed both by the BIA environmentalists and the NIGC environmental staff, et cetera.

EXAMINATION BY MR. WILSON:

Question. Just following up, Mr.—

Answer. Can we go off the record for a second?

Question. Absolutely.

[Brief Recess.]

Mr. WILSON. If we could go back on the record.

EXAMINATION BY MR. WILSON:

Question. Just following up one of the exchanges, you were asked about subsequent contacts between either applicant tribe members or people who were affiliated or worked for the applicant tribe members in the Department of Interior staff. Now you can help me with this and correct me. My understanding is the subsequent contacts by the applicant tribes, the chairman or the people who are working for them, were all directed at trying to find out why the decision was taking so long, when the decision would be made, what they could do to help expedite the decision or fix any problems if there were any problems; is that correct?

Answer. Yes.

Question. So they weren't actually seeking to put new material into the record; is that right?

Answer. I don't think so. I think they did submit materials at some point, but in the meetings we discussed various issues we were confronted with. I remember we had a very lengthy meeting with Galaxy Gaming concerning the best interest part. We had long discussions about that.

Mr. BALLEEN. Did you not have a meeting with the chairman of the Red Cliff band?

The WITNESS. Yes, there was a meeting with the chairman of the Red Cliff band.

Mr. BALLEEN. Did he not make a strong plea to write that band as an impoverished tribe and that their location is in a very poor area?

The WITNESS. He did it orally.

Mr. BALLEEN. Yes, he did orally.

The WITNESS. Of course, when we met with the tribes, they would urge approval.

Mr. BALLEEN. And were these factors you took into consideration?

The WITNESS. Yes.

Mr. BALLEEN. And did he not make an impassioned case for the approval?

The WITNESS. Yes, he did.

EXAMINATION BY MR. WILSON:

Question. And following up on that, when you had the meeting with Mr. Newago, the chairman of the Red Cliff Band of Chippewas, did you say, Mr. Newago, this is a problem that you must cure or we cannot approve your application?

Answer. I don't recall specifically, the specifics of the discussion of that meeting, but it was a meeting with Counselor Duffy, from what I recall.

Question. So is it fair to characterize meetings between Interior staff and the applicants as a complete waste of the applicant's time if they were not told during those meetings that there were problems that had to be cured or else the application would be denied?

Answer. No, it was not a total waste of their time, and I think that they were told that there were problems. There was no decision at the time about, you know, when we met with them. I don't think the ultimate decision was made, so we were still considering the application.

Question. But presumably there can be problems with an application that gets passed?

Answer. When an application gets passed?

Question. People can have concerns. They can articulate that I have a concern about this, I am wondering about this, but that doesn't necessarily communicate to the listener that the application is going to be denied unless there is a direct communication that there is a specific problem that will result in denial of your application.

Answer. The number of meetings we had with them, the decision had not been made yet.

Question. But just returning to the fundamental premise here, they had an interest in a decision being made, so my understanding is they kept coming back and asking about the decision. But did you ever have a meeting where you were with either the three tribal chairmen, Gaiashkibos, or Rose Gurnoe or Al Trepania or Arlyn Ackley or George Newago, and you told one of those people you must do a particular thing or else we will reject your application?

Answer. I think we advised them that we had some concerns with their application and we told them what they were, but I don't think a decision necessarily had been made as to what we were going to do at that point, so it would have been premature to tell them we are going to reject the application in, say, March or April, whenever we met with them, for these reasons.

Question. When would it not have been premature to tell them that you had problems that would result in the denial of the application?

Answer. When I think that after the views of the Department were pretty much decided, sometime in June, it would have been—well, you know, it is hard to say, until the final decision is made.

Mr. BALLEEN. Isn't it a fact until July 14, and we talked about this earlier, there were changes right up until July 14, so until July 14 when the Department had a point of view.

EXAMINATION BY MR. WILSON:

Question. So your testimony is the applicant tribes were shooting at a moving target; they didn't know what they were—what you wanted them to do to get the application passed.

Answer. I don't know what they were thinking. I am not going to speculate what their thinking was.

Question. But from your perspective, you were the head of IGNS, you had a number of meetings with individuals from either the tribes or their employees. If your rationale was changing throughout the period, February through July of 1995, how could they ever know—

Answer. We did not come, you know, to a final conclusion until sometime in June.

Question. How could they know what they had to do to meet your needs?

Answer. Well, they didn't necessarily know what they had to do until the position of the Department was finally articulated.

Question. On July 14 of 1995?

Answer. Right.

Question. Okay.

Answer. And then when they received the denial letter, they could essentially take curing measures and resubmit an application.

Question. Did you ever come to a determination the Minnesota area director had followed the Department's policies and procedures in conducting their consultations regarding the proposed Hudson casino application?

Answer. I think consultation was conducted, yes.

Question. So as far as you were concerned, the Minnesota area director had taken all the steps that the area office was supposed to take in this type of application?

Answer. That is correct.

Mr. BALLEEN. Is that including consulting with the Governor?

The WITNESS. No, that does not include consulting with the Governor. That is one thing they didn't do.

EXAMINATION BY MR. WILSON:

Question. So your testimony is they didn't take all the steps?

Answer. They didn't take that step.

Question. So why did you not make them go back and take that step?

Answer. Didn't we? I thought we advised the Minneapolis area office that they had failed to consult with the Governor in the record. I would have to look for it, but I thought there was some indication that we did.

Question. To be fair, I'm not sure of that, but I think the record, and we've been through this and you have testified, the record does not have any indication of any result of a consultation.

Answer. With the Governor; right. They didn't do it, but I'm not sure we didn't tell them not to do it. I'm not sure that we told them—that we did not tell them that they had to do it.

Mr. BALLEEN. You may have told them that they had to do it?

The WITNESS. Right.

Mr. BALLEEN. And then they didn't do it?

The WITNESS. And they just didn't do it.

EXAMINATION BY MR. WILSON:

Question. So it is difficult for us sitting here to understand, unless the conclusion was preordained, why you wouldn't do the things that you were supposed to do.

Answer. We did the things we were supposed to do.

Question. Well, you have just explained to us that the area office and also the national office did not consult with the Governor, and you have told us that that was something they were supposed to do.

Answer. Yes, that's right. Well—

Question. Now, the Secretary is telling us something different about what happened. It makes it difficult.

Answer. No, let me clarify. I think that the Minneapolis area office was under the impression that they did not need to consult with the Governor. And at the time there was no guidance, if they did their consultation, there was no guidance on whether the Governor should be included or not.

Mr. HORN. Is there guidance now?

The WITNESS. There is guidance now that they should consult. And I think it was certainly—and that's why I thought we told them that they should do the consultation, but they just didn't.

EXAMINATION BY MR. WILSON:

Question. But if you told them they were supposed to do the consultation and they didn't, why did you not take care of your own internal housekeeping procedures before you either accepted or rejected the application? If this is a piece of the application puzzle that has to be completed, why did you send out a rejection letter?

Answer. Why did we—

Question. If by your own testimony you were supposed to do something and you didn't do it, why did you jump to the next step, which is rejecting the application?

And let me just clear this up. For all you knew the Governor of the State would write you a letter saying, I have seen fraudulent, absurd letters of opposition. I'm all for it. I think it is a wonderful thing. These poor tribes need your help, and I'm really pleased you are doing it.

He might have said something else. You presumably don't know what he would have said.

Answer. That's right.

Question. Okay. So if it's something you told the area office to do—

Answer. Right.

Question [continuing]. And it is something they didn't do, and you knew they didn't do it, why didn't you hold off your either approval or rejection until the Department of the Interior had done what it was supposed to do?

Answer. Well, there was no formal requirement, as I said, that the Governor was an appropriate State official at the time. Now there is.

I think that I certainly thought that the Governor should be consulted. But it was not something that was in the checklist that was applicable to that application. On hindsight, I think we should have sent a letter, made sure a letter was sent. That was just not done.

Question. And that's why we're here, to try to work through the problem of conception for the record that the decision might be preordained if you are not doing the things that lead to a complete record. And you have testified that it was your thought that the area office should have consulted the Governor.

Answer. That's right.

Question. And we even have representations from the Secretary of the Interior that they did consult the Governor, which makes it very confusing for us.

So we will move on to the next thing.

Mr. BALEN. I disagree with that.

Mr. HORN. Before you leave that, I would like to ask about one sentence there. If I got it right, you said, quote, in June the views of the Department were decided, period, unquote.

The WITNESS. Sometime in June, yes. I submitted my recommendation in June.

Mr. HORN. Now, what do you mean by the word "department"? What does that encompass in the Department of the Interior?

The WITNESS. Well, that would involve me. But I think by June I knew the views of the Secretary's office and of the Assistant Secretary's office; that there was essentially a consensus that they were—there was no support, or there was a decision—there was going to be a decision to not to approve the application.

Mr. HORN. So, in other words, you got the tip-off from headquarters.

The WITNESS. I knew what the views of Mr. Duffy were and Mr. Anderson and the others. Yes, I did.

Mr. HORN. I thought that's what that word implied. I just wanted it on the record that includes the Secretary of the Interior and his immediate staff. His immediate staff wouldn't do it if the boss didn't want it done.

The WITNESS. I have no idea. I have no idea about that.

Mr. HORN. Trust me, having been a cabinet assistant, you don't do it unless the boss clears it.

Mr. ELLIOTT. He has not testified the Secretary has made his views clear to him.

The WITNESS. I have never talked to the Secretary.

Mr. HORN. Let's face it. If you are a smart young man, and you appear to be a smart young man.

The WITNESS. I'm not that young.

Mr. HORN. You are. You are very intelligent, and you are very committed. And it seems to me those smart people get those winds as to what the boss wants and they like to please the boss.

Mr. BALLEEN. Is that what happened here? Did you get winds of what the boss, meaning the Secretary, wanted and, therefore, you decided that way?

The WITNESS. No, I don't know—I just don't know what the views of the Secretary personally were, but I know what the views of Mr. Duffy were and his staff.

Mr. BALLEEN. Did you decide this based on the record of what you thought was the correct thing to do?

The WITNESS. Can you repeat that?

Mr. BALLEEN. Did you decide, based on the record, as to what you thought, and your staff thought, was the correct thing to do here?

The WITNESS. I made my recommendation on June 29th based on what I thought was the right thing to do. But I did know the views of the Secretary's office, the solicitor's office. And in my previous deposition I think I was asked how much did that weigh. And, frankly, you know, when—I can't answer that question. I think that, in all fairness, when you know everyone's views, it essentially has an impact, and it is just the kind of thing that comes into consideration.

I would like to think, and I think that my recommendation was based on the record, and it is what I would have thought and I thought based on what I knew at the time, based on the record.

EXAMINATION BY MR. WILSON:

Question. Is it correct to say that this was the first matter in which the consultation process was reopened at the central office level in Washington?

Answer. I don't know that, the answer to that.

Question. Given that you were having a separate articulated period with a date, beginning date and end date, did you ever ask anybody, are we doing something different than has ever been done before at the Department of the Interior?

Answer. I didn't ask that.

Question. Can you tell me today whether the decision to reopen the consultation process at the central office level represented a change in policy and procedure at the Department of Interior?

Answer. I don't know.

Question. Do you know who made the decision to completely reopen the consultation process and what were the reasons provided for this decision?

Answer. The decision was made by the counsel to the Secretary.

Question. Is it your opinion that the proposed casino would have been approved if Mr. Duffy had not reopened the consultation process?

Answer. I can't answer that question. It's too speculative.

Question. Did you have any discussions with Assistant Secretary Ada Deer on or before May 1st of 1995 regarding the merits of the proposed Hudson Dog Track application?

Answer. I don't recall any discussions with Ada Deer.

Question. You attended a second meeting on Capitol Hill with John Duffy and Tom Collier; isn't that correct?

Answer. That is correct.

Question. Were there any other employees from the Department of the Interior at that meeting?

Answer. Not to my recollection.

Question. So just to characterize this accurately, it was yourself, the head of IGMS; John Duffy, counsel to the Secretary of the Interior; and Tom Collier, chief of staff of the Secretary of the Interior; is that correct?

Answer. That's correct.

Question. How did this meeting come about?

Answer. I have no idea. I was asked by the Secretary's office to join them for that meeting.

Question. Where did the meeting take place?

Mr. BALLEEN. Do you have a date on this meeting? When did it take place?

EXAMINATION BY MR. WILSON:

Question. Can you give us a date for the meeting?

Answer. I don't remember. I just don't remember when that meeting was, I'm sorry. It occurred after February 8th, sometime during the consideration of the proposal.

Mr. BALLEEN. Was it before March 27th, before April 30th when you signed the—

The WITNESS. I don't remember. I don't remember.

Mr. BALLEEN. Was it in June, at the end of the process? Was it at the beginning or the middle or the end?

The WITNESS. I think it was in the middle somewhere, but I don't recall specifically. I think it was in June.

EXAMINATION BY MR. WILSON:

Question. Who attended that meeting, apart from the three individuals you mentioned?

Answer. Well, there was Congressman Oberstar, and I don't—it was a much smaller meeting—and some of his aides, and I just don't recall who else.

Question. And what was said at this meeting?

Answer. I have no specific recollection of what was discussed at the meeting except that the discussion at the meeting was the status on the dog track application, which is the reason I was there.

Question. Did yourself, Mr. Duffy and Mr. Collier discuss the meeting afterwards?

Answer. I think there was some discussion on the way back, from what I recall.

Question. What did each of you say?

Answer. Well, I think we had—this is based on my recollection. I think we had a discussion on detriment to the surrounding community under section 20. And I don't think I said much of anything, but they had a discussion on how much supporting documentation was necessary under the law in section 20 to make a finding of detriment.

Mr. ELLIOTT. Mr. Wilson, this was covered in great detail in the Senate deposition. I think in the interest of time and in view of the fact this was not to be covered—

Mr. WILSON. Okay, we will try to move from this.

EXAMINATION BY MR. WILSON:

Question. Did anything that was said at that meeting or afterwards by Mr. Duffy and Mr. Collier have any effect on your views about the proposed dog track proposal?

Answer. You mean on the way back to—

Question. At the meeting or afterwards on the way back.

Answer. No, I don't recall. I don't recall what was said at the meeting.

Question. Please describe Mr. Collier's role in the decision regarding the proposed Hudson Dog Track application.

Answer. Well, I don't know what his role would have been. I think that meeting was the only one that I recall having with him on the dog track. So he was the chief of staff of Secretary Babbitt. I'd have very little contact besides that with him. I don't think I can recall any contact with him.

Question. Describe what was discussed at the May 17, 1995, meeting between yourself, Mr. Hartman, and the three, the representatives of the three Chippewa tribes?

Answer. I don't recall this May 17th meeting.

Question. Do you recall having a meeting with yourself, Mr. Hartman, and representatives of the three Chippewa tribes?

Answer. We did have some meetings. I don't recall the dates and I don't recall specifically—

Mr. BALLEEN. Excuse me, the three applicant tribes?

EXAMINATION BY MR. WILSON:

Question. The three applicant tribes, yes.

Answer. Were all three applicant tribes there?

Question. Well, I'm not entirely certain.

Answer. I'm not either. I don't have any specific recollection of that meeting.

Question. Did you and Mr. Hartman, to the best of your recollection, identify any issues during that meeting or any other meetings that had the potential for resulting in the application not being approved?

Answer. I'm sorry, can you repeat the question? I'm getting awfully tired.

Question. Sure. When you and Mr. Hartman attended a meeting with the three Chippewa applicant tribes, do you recall identifying any issues that potentially would result in the denial of the application?

Answer. You see, I don't recall that meeting, so I just don't recall that.

Question. Did you attend a meeting on May 23rd of 1995 with Mr. Hartman, Michael Anderson, Scott Dacy and Debbie Duxtator?

Answer. I don't recall the date. I remember that we did attend a meeting with the Oneida tribe of Wisconsin, including Mr. Dacy and Debbie Duxtator. I don't recall Tom Hartman being at the meeting. I know Mike Anderson was at the meeting.

Question. Was it your understanding, as of May 23rd, 1995, that—

Answer. If that meeting was on that date. I don't remember that, okay?

Question. I understand there is a vagueness in your recollection as to the precise date. But was it your understanding as of the date of your meeting with Debbie Duxtator and the other Oneida representatives that local opposition needed to be supported by factual and/or documentary evidence showing that the proposed application would be detrimental to the surrounding community?

Answer. Under section 20, you mean?

Question. (Nodding in the affirmative.)

Answer. No, I'm not sure. I'm not sure what that has to do with this meeting.

Mr. BALLEEN. Can I ask a question?

Mr. WILSON. Sure.

Mr. BALLEEN. Apart from section 20. Try Mr. Wilson's question without including section 20. Was it your view or was it communicated at this meeting, to the best of your recollection, that local opposition had to be substantiated and documented?

The WITNESS. I don't recall that we discussed this at this meeting. The only thing I recall about this meeting is that they were opposed to this acquisition and felt that this acquisition would be detrimental to their gaming operations.

I recall that, from what I recall now, that it seemed to me that the Oneida tribe of Wisconsin, even though it was consulted, was very far located, very far from the gaming site, and I just didn't see personally why any detriment, why they would suffer any detriment in Green Bay, Wisconsin.

EXAMINATION BY MR. WILSON:

Question. Was it your understanding, as of the meeting with the Oneida representatives, that competition with another off-reservation casino was not a relevant factor in determining whether the proposed Hudson Dog Track application would be detrimental to the surrounding community?

Answer. No. What I recall is that competition with their casino was not relevant.

Question. Do you recall a meeting with representatives of the three applicant tribes on May 31 of 1995?

Answer. Not specifically.

Question. At any of the meetings with the applicant tribal representatives, did you identify competition with the St. Croix Chippewa Turtle Lake casino as a problem in that application?

Answer. I don't specifically recall, but I think we would have brought this up. They were aware of that issue. So I think we did.

Question. And I think you have already testified that there was some concern about the impact of the proposed casino on the usage of the St. Croix scenic waterway. Did Mr. Slagle of your staff ever go out to Hudson to look at the casino and the St. Croix waterway?

Answer. I didn't send him to look at that. If he is familiar with that area from his own travel, that would be a possibility, but I don't know that. He may have been up there, but I didn't send him up there specifically to look at that.

Question. So you are telling me today unless Mr. Slagle had some reason apart from analyzing this particular application to try to determine whether the casino and the waterway had any impact on each other, you don't have any knowledge of any specific attempt to make a determination on this, at least a trip to—

Answer. A trip, no. Right.

Mr. BALLEEN. A trip is different from a determination.

Mr. WILSON. I apologize.

The WITNESS. That's right.

Mr. BALLEEN. He can look at the record. He's an environmental expert.

The WITNESS. And he did, but I'm not aware of any trips he took to Wisconsin.

Mr. WILSON. You make a point he can look at the record and come to a conclusion. It's my understanding that a number of career Department of the Interior people actually did go and look, or at least some career Department of the Interior employ-

ees did go to the Hudson Dog Track and did look at the waterway and did come to a conclusion that there was no impact.

Mr. BALLEEN. But let me ask as a follow-up to that, was Mr. Slagle your environmental expert on this?

The WITNESS. Yes, he was.

Mr. BALLEEN. Did he express concerns to you about the potential effects of the project on the environment?

The WITNESS. Yes, he did.

Mr. BALLEEN. And that was because he reviewed the matter and took into account his own expertise and looked at the record?

The WITNESS. That's correct.

EXAMINATION BY MR. WILSON:

Question. Did you ever ask whether it would be significant for his analysis to make a trip to Hudson, Wisconsin, to analyze this issue?

Answer. No, I did not.

Question. Did he ever indicate to you that he thought it would be beneficial?

Answer. I don't think he did, no.

Mr. BALLEEN. Was it not the applicant tribes' responsibility to comply with NEPA in the application; to meet the requirements of the NEPA, the environmental requirements? Wasn't that their burden, to try to meet that?

The WITNESS. They essentially submit the environmental assessment on this issue. The Bureau has to review the environmental assessment that is submitted to determine that it meets the requirements of NEPA and issue a finding of no significant impact, a FONSI, if it determines that there will be no significant impact.

If the Bureau determines that the environmental assessment shows there will be significant impact, it would require an Environmental Impact Statement to be developed.

EXAMINATION BY MR. WILSON:

Question. Let me just follow up on that point. Mr. Ballen asked whether it was the burden of the applicant tribe to determine whether there was an environmental impact.

Now, is it true that the Ashland office, the Minneapolis offices, communicating through the November 15, 1994, and the April 30, 1995, letters recommending approval of the application, had already indicated that there were no significant problems?

Answer. That's correct.

Question. Okay. Given that the applicant tribes already had from the Department of the Interior, and career Department of Interior officials, an indication that there was no problem, when was it communicated to the applicant tribes that there was a problem, an environmental problem, that would be fatal to their application?

Answer. Fatal to their application? I'm not sure it would be fatal. I think it was one of the concerns that we had, but—

Question. I don't want to be mysterious again, but we're playing by rules here, apparently. The rules, as far as the applicant tribes knew, were that they had to come to some determination of environmental concerns. They had been advised by the Department of the Interior on two separate occasions that they had jumped through the appropriate hoop.

Now, if somebody didn't go back to them and say, gee, there was a serious problem, our people made a big mistake, they didn't get it right, please take this burden on yourself and show us why it's right, how could they ever know, short of divination or the consulting of a medium, that they had to do something else?

Answer. I'm not—

Mr. ELLIOTT. Mr. Wilson, he has testified time and again that he had meetings with these tribes. He has testified that they knew what the problems were, they understood where the weaknesses were in their application. He has testified time and again there was not one single factor that was fatal, and you are trying to parse this thing out to where this was fatal, this was fatal, this was fatal.

He has testified he made his recommendation based on the entire record.

Mr. WILSON. I don't think he has testified to that.

The WITNESS. That I have made my recommendation on the entire record?

Mr. WILSON. No, to everything that he said. That is actually an incorrect representation of what you have testified to.

The WITNESS. My recommendation is made in my June 29 draft.

EXAMINATION BY MR. WILSON:

Question. Going back to my basic question, if you are trying to be fair to the applicant tribes, at some point, given that they have already had representations on paper signed on Department letterhead that there was no problem, how could they know that somebody was going to reject their application until they actually received the piece of paper?

Mr. BALLEEN. I'm going to object to you, because I think the representations you are referring to in the Department came from the area office.

Did not the tribes know that the final decision in this matter would be made by the central office and not the area office?

The WITNESS. Yes, they did know that.

Mr. BALLEEN. So that whatever the area office told them, they knew that this was a matter that was going to be considered de novo by the central office?

The WITNESS. We would look at the record, yes. But when we met with the applicant tribes on various occasions I think we did discuss the problems we had with the application. Whether we specifically discussed this problem, I don't specifically recall. That's all I can say.

Mr. WILSON. I don't think anybody has ever been objected to me. A moment of levity.

The WITNESS. I think we've covered this before, in terms of whether we should have sent the application back to the area office or issued a letter. You know, we could have done each, but we could have done it one way or the other.

In my opinion, at the time, I thought that issuing the letter would have the same effect, as I discussed before, of sending this back to the area office.

EXAMINATION BY MR. WILSON:

Question. Just in the interest of a fair and complete record, Mr. Ballen began his questions of you asking you about whether your mission was to help Indians, and the bottom line in this is you helped Indians, wealthy Indian opponents, of this application. You didn't help other Indians, the three applicant tribes.

And it is very difficult for us to work through all these issues when these types of considerations are brought in.

Mr. BALLEEN. Do you want a chance to respond to that, since it was a statement and not a question?

Mr. WILSON. Please.

The WITNESS. Yes, I think that I would have liked to be able to help the three tribes, you know, for their acquisition. And I think on a different record I would have looked to see whether I could make a recommendation to the Secretary that was different than the one I made on June 29th.

But that is not the record that I had before me. And based on that record, what can I say, but say for the nth time again that I felt that I could not in good conscience recommend to my boss to exercise his discretion to acquire this site at this time based on the records, based on the laws that we were following. That's all I can say.

EXAMINATION BY MR. WILSON:

Question. But the record would have been different, possibly, if you had told people what you needed, what was fatal to the application. They could have come back and said you have a problem with police? We will get you more police.

Mr. ELLIOTT. Mr. Wilson, he has acknowledged that.

The WITNESS. Yes, many times.

Mr. ELLIOTT. We've been here, Mr. Wilson, for 7 hours. You allowed as how it would be shorter than yesterday's and it has not been shorter than yesterday's and you are covering the same ground. You are covering ground that you said you were not going to cover that was covered by the Senate.

Mr. HORN. Let me ask, while Mr. Wilson is looking at his questions. I'm not clear on the degree to which you or any member of your staff phoned the area director after you got the application from the Wisconsin Indians and you saw certain things that maybe were a little weak in its—I'm not clear. Did you phone that area director and say, hey, why did you guys let this come through? Why didn't you question a few things and see if there's more evidence that's needed?

The WITNESS. I didn't phone the area office.

Mr. HORN. You didn't. Did any of your staff, to your knowledge?

The WITNESS. I don't know.

Mr. HORN. You don't know.

The WITNESS. No.

EXAMINATION BY MR. WILSON:

Question. Were you aware that Heather Sibbison, from your office, contacted Jennifer O'Connor in the White House in May of 1995?

Answer. I was not.

Mr. BALEN. I want to note that that was covered in the Senate testimony as well.

EXAMINATION BY MR. WILSON:

Question. When did you personally believe that you had reached a point where the application had to be denied?

Answer. How can I pinpoint that time? It would be sometime in late May or in June. Early June. At some point around there.

Question. And why did you come to that realization?

Answer. I think by looking at the record, I came to the conclusion—well, for the reasons that I stated in my June 29th, 1995, draft recommendation, which I have already read from.

Question. We've looked at the June 8th, 1995, material signed by Mr. Hartman. Did the report have "draft" stamped on it when you received it?

Answer. Yes, it did.

Question. Do you have any basis for disputing Mr. Hartman's statement in the report that indicates Mr. Hartman was speaking on behalf of the staff of IGMS?

Answer. Yes, I think those were his personal views, and I don't think that he had the staff, the other staff of IGMS, review the document that he signed.

Question. And how do you know that?

Answer. I think he told me that.

Question. So your testimony is that Mr. Hartman did not involve any other staff in the preparation of the June 8, 1995, memo; is that correct?

Answer. That's correct. I think that he lifted some of the documents from the January work that he did, but at the time that he put together the June 8th memo, I don't believe that he involved anyone else on the staff, and I don't think that he did.

Question. Describe how it came about that you drafted the June 29, 1995, draft decision letter for Ada Deer's signature?

Answer. Because at the time I did not know who was going to sign the document.

Question. When were you first—I know this has been covered, but when were you first aware of her recusal?

Answer. I don't remember. I don't remember when she recused herself.

Question. But you were not aware as of June 29th?

Answer. Yes, apparently not. I mean I don't recall when I was aware of it, but the document would indicate I was not aware of it on June 29th.

Mr. BALEN. Did it make a difference to you?

The WITNESS. No, it would make no difference to me whatsoever.

EXAMINATION BY MR. WILSON:

Question. Did the June 29, 1995, draft decision letter for Ms. Deer's signature represent only your views or did anyone else have any input in the drafting of that particular letter?

Answer. No, it only represented my views.

Mr. HORN. They are only your views?

The WITNESS. Yes.

Mr. HORN. On the final version?

Mr. WILSON. I'm speaking of the draft, June 29th.

Mr. HORN. Oh, the draft. Okay.

Mr. BALEN. Did you have input from your staff before coming to those views, throughout the process?

The WITNESS. Throughout the process?

Mr. BALEN. Yes.

The WITNESS. Yes, I had input from Tom Hartman and Ned Slagle and maybe others, but I drafted that document.

EXAMINATION BY MR. WILSON:

Question. I apologize if I'm covering this a second or third time, but is it correct to say that the IGMS had not completed even a draft report analyzing the proposed trust acquisition in terms of the factors in part 151 at the time of the June 29, 1995, decision letter?

Answer. That the IGMS draft—

Question. Had not completed even a draft report analyzing the section 465, 25 CFR, part 151 analysis?

Answer. I think that's correct.

Mr. BALLEEN. Sir, excuse me. I'm going to make a point for the record. It is 7:00 o'clock. You seem, just by watching, you seem to be tired and slumped in your chair. This is an important matter. Mr. Wilson, I'm sure Congressman Horn, would agree that if you are fatigued or having difficulty concentrating or answering these questions, we would not want to continue and we would resume at some other point.

Because you look like you are slumped in the chair and very tired.

The WITNESS. Well, that's correct. That is true. If we can do that, if this is going to continue, yes.

Mr. BALLEEN. You mentioned earlier you're diabetic.

The WITNESS. Right.

Mr. BALLEEN. These are important matters. You are under oath. We all want you to answer with your—

The WITNESS. Right. If this is going to continue for a while, I would prefer that we resume at another time.

Mr. WILSON. I think I can clear up everything within half an hour.

The WITNESS. Oh, that's a long time.

Mr. WILSON. Within half an hour.

The WITNESS. Well—

Mr. WILSON. I think maybe I can do it in 15 minutes. I don't know. Can we give it a shot and try to finish it up?

Don't let me—I don't want to be accused of trying to coerce you.

The WITNESS. I would prefer that we reconvene. At this point, I'm extremely tired and I feel a headache. So I think it's a good time to stop.

Mr. WILSON. Okay. Let's see if we can come to a conclusion. Many of the new documents we're not going to be able to get to until the hearings themselves. I imagine they involve you. Probably not going to cover those.

Okay, let's go off the record.

[Brief Recess.]

[Whereupon, at 7:05 p.m., the deposition was concluded.]

[The exhibits referred to follow:]

United States Attorney's Office
Western District of Wisconsin

February 14, 1996

Attorney/Client
Communication

MEMORANDUM FOR SCOTT KEEP, OFFICE OF THE SOLICITOR

From: David E. Jones, AUSA

Subject: Analysis of Litigation Risks in Sokaogon, et al. v. Babbitt, et al.

SKC165
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This responds to your request that litigation counsel provide a brief analysis of the litigation risks in Sokaogon, et al. v. Babbitt, et al., No. 95-C-659-C.

1. **Substantial Potential for Burdensome Extra-Record Discovery.**

In our February 2 hearing on the discovery motions, Judge Crabb's questioning indicated strongly that she would deny our request to limit discovery to the administrative record. She stated outright that "if this were a non-APA case, plaintiffs would easily have demonstrated a reasonable basis for the discovery they seek here" and she asked "What's a plaintiff to do when there is some evidence that outside influences may have affected an agency's decision." She also appeared to believe that the White House, through Harold Ickes's office, exerted influence over the Department, an allegation that plaintiffs pressed by observing that Secretary Babbitt did not provide an affidavit denying his alleged statement that Ickes had ordered the Department to deny the application on July 14, 1995.

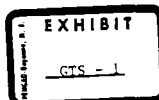
A decision allowing extra-record discovery is therefore highly probable, and such a decision would create a difficult precedent affecting not only the Department but also every controversial agency decision. We can expect that the following individuals will be deposed: John Duffy, George Sklbine, Michael Anderson, Heather Sibbison, Donald Fowler of the DNC, and perhaps Harold Ickes and Secretary Babbitt. (Note: Ickes has not been noticed by plaintiffs to date and Babbitt's initial notice of deposition has been withdrawn by plaintiffs.) We can also expect burdensome document requests and interrogatories, such as requests for a list of all persons who contacted the Department during the review of the plaintiff tribes' application.

2. **Section 465 Defense Will Not Prevent Remand.**

We do not believe that a defense based on 25 U.S.C. § 465 will prevent the Court from ordering a remand to remedy alleged defects in the § 2719 process. At most, a § 465 defense precludes the Court from ordering the Department to take the land into trust. But this defense will not constrain the Court from ordering a remand if it finds that the Department did not satisfy the consultation requirements imposed by § 2719, particularly given the factual circumstances of this case.

We understand the Department's view that it first reviews an application under § 465 before engaging in the § 2719 analysis, but the record in this case shows that the sequence was reversed: the Department received the Area Office's § 2719 recommendation, and began its review of same, in November 1994, while the

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This document is being provided to the Department of Justice pursuant to a subpoena.

Department did not receive the § 465 package from the Area Office until April 1995. Opposing counsel have pointed out this timing, and the Department's final decision letter of July 1995 can also be read as indicating that the § 2719 process occurred before the Department broadened its range of considerations under § 465.

The consequence of our factual posture is that the Court could reasonably remand this case with an order that the Department reconsider, as a threshold matter, its § 2719 analysis. Such an order would inhibit the Department's ability to dispose of future applications on § 465 grounds without reaching the § 2719 factors, as future litigants could point to a precedent establishing specific, threshold consultation requirements in these types of decisions.

3. Alleged Defects in the § 2719 Process Are Problematic.

Now that we have reviewed the administrative record in greater depth, we have determined that the alleged problems with the § 2719 process are significant. We are primarily concerned about our ability to show that plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome-determinative. Area Directors are told to give applicants an opportunity to cure problems, and it will be hard to argue persuasively that applicants lose this opportunity once the Central Office begins its review. The administrative record, as far as we can tell, contains no record of Department meetings or communications with the applicant tribes in which the Department's concerns were expressed to plaintiffs. These communications may have occurred, but they simply are not documented in the record. The second, and related, problem is that the Department appears to have changed in this case its past policy of requiring "hard" evidence of detriment to the community. The plaintiffs will therefore argue that they had no notice, either through past policy or through direct Departmental communication, that the "soft" concerns expressed by local officials would jeopardize their application. Finally, the record shows that there was no consultation with the State, in contravention of § 2719.

In sum, the Court could take these problems and reasonably conclude that the Department should reconsider the application and provide the plaintiffs with "meaningful" consultation. The risk, of course, is that the Court could also specify what it means by "consultation," throwing further impediments in the Department's future review of these types of applications. These risks would be avoided through a voluntary reconsideration, which plaintiffs could obtain anyway with a new application.

4. Settlement Preserves Department's Flexibility in Defining Scope of § 465.

Finally, we understand that the Department is examining how it should exercise its § 465 discretion in light of the Eighth Circuit's recent decision. To have a chance of winning this case, litigation counsel will need to argue aggressively that the Department has extremely broad discretion, both substantively and procedurally, when it considers an application under § 465. This litigation position may not, as we explained above, be dispositive of all the issues before the Court. At the same time, this position may be inconsistent with wider Departmental goals. It may therefore

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increase the Department's policy flexibility if this case were eliminated as an influence.

As you know, we need to move quickly on this opportunity for settlement before the Court reaches a decision on the discovery motions. Please advise us if you need any additional information.

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No Casino Favoritism

To the Editor

William Safire (column, Dec. 31) jumps to erroneous conclusions as to why the Interior Department denied the application by three Wisconsin tribes to establish a casino 85 to 188 miles from their reservation.

It was the right decision, made for the right reasons, and I have told the truth about it. This department does not force off-reservation casinos upon unwilling communities. City councils of the towns of Hudson and Troy, as well as three senators from both political parties, seven Minnesota members of Congress, the Republican Governor of Wisconsin and many others opposed the casino.

Mr. Safire opines that Harold M. Ickes "caused heat to be put on" me to deny the application. The facts, spread across a voluminous record, prove otherwise. I did not participate in the decision, and as I have said in sworn testimony I have never spoken to Mr. Ickes — nor to anyone else at the White House or the Democratic National Committee — about this matter.

Mr. Safire falsely asserts that a "staff recommendation" approving the casino was changed for political reasons. In fact, the draft memorandum cites only the criteria to be considered in determining local opposition, not whether the casino should be approved. The decision to deny was based on the recommendation of the senior civil servant in the gaming office and supported by his staff. They testified they were unaware of any contributions by interested tribes or of any communications between the tribes and the White House or the D.N.C.

BRUCE BABBITT
Secretary of Interior
Washington, Jan. 2, 1998



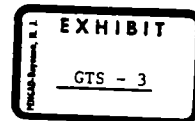
STATEMENT OF SECRETARY BRUCE BABBITT
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
OCTOBER 30, 1997

I am glad to have an opportunity to set the record straight on the Hudson casino matter. Let me start with some plain facts that should dispel in fair minds the clouds of unwarranted suspicion that have been raised about it.

First, I had no communications with Harold Ickes or anyone else at the White House about the Interior Department's consideration of a request by three Wisconsin Chippewa tribes that the United States acquire a parcel of off-reservation land in Hudson, Wisconsin so that the tribes could open a casino on it in partnership with a failing dog racing track. I had no communications with Mr. Ickes or anyone else at the White House about either the substance or the timing of the Department's decision. I have since been told that Mr. Ickes' subordinates communicated with my subordinates on three occasions. I was not aware of those communications before the Department's decision on July 14, 1995. I do not believe that those communications involved any attempt by the White House to exert influence on the Department's decision in the Hudson case.

Second, I had no communications with Donald Fowler or anyone else at the Democratic National Committee concerning the Hudson matter.

Third, I did not personally make the decision to deny the Hudson application, nor did I participate in Department deliberations relating to the application. The decision, however, was made on my watch, and I take full responsibility for it. Furthermore, I agree with it.



Fourth, the Department based its decision solely on the criteria set forth in Section 20 of the Indian Gaming Regulatory Act. Let me be very clear why this decision was made, and could not properly have been made any other way. Under the Indian Gaming law, and this is a very important point, if tribes wish to place a casino off their own reservations, as in the Hudson case, then the law imposes stringent tests for Departmental approval. The law requires a finding that the casino would not be detrimental to the surrounding community. This determination must be made after consultation with local officials, including officials of other nearby Indian tribes. With respect to this criterion, the Department in this Administration has adhered to a policy that off-reservation gaming will not be imposed on communities that do not want it. In this case, the three Chippewa tribes requested that we acquire off-reservation land to open a casino located within the City of Hudson, which is 85 miles from the nearest of their three reservations. So we had to consider the application under the stringent rules for off-reservation casinos. Under Department policy, the only fair way to make this determination is to give great weight to the view of local elected officials and tribal leaders. In this case, the City Council of Hudson passed a resolution opposing an Indian casino in Hudson. The City Council of Troy, Wisconsin, a nearby community, also passed a resolution opposing an Indian casino in Hudson. The elected state representative from that district in Wisconsin strongly opposed it, as did the Congressman representing the district. Many other elected officials from the region also weighed in against the casino, including Senator Feingold of Wisconsin, Senator Wellstone of Minnesota, and Congressmen Oberstar, Sabo, Vento, Ramstad, Peterson, Minge and Luther, all of Minnesota. In addition, a tribe which has an on-reservation casino within 50 miles of Hudson strongly opposed the proposal.

This virtually unanimous opposition of local governments, including the nearby St. Croix tribe, required the Department to reject the application. This was the recommendation of the senior civil servant responsible for the matter, and I fully support the decision that was made on the basis of that recommendation. (A copy of the decision is attached.)

Fifth, it is not true, as some have alleged, that political appointees in the Department overruled a career civil servant recommendation that the Department approve the Hudson application. In fact, the eighteen-year career civil servant who headed the Indian Gaming Management Staff received both favorable and unfavorable recommendations from his subordinates and reached his own conclusion that the Department should deny the application in view of the strong community opposition. He made that recommendation to the Deputy Assistant Secretary for Indian Affairs who, in consultation with the Solicitor's Office and others in the Office of the Secretary, agreed with the recommendation and issued a decision to that effect.

Sixth, I had no knowledge as to whether lobbyists on one side or the other of the Hudson issue had sought the help of the Democratic National Committee on this matter. But to whatever extent this happened, I can say with conviction that it did not affect the substance or the timing of the Department's decision.

In sum, the allegations that there was improper White House or DNC influence and that I was a conduit for that influence are demonstrably false. There is no connection at either end of the alleged conduit. At one end, as I have stated, I did not speak to Mr. Ickes or anyone else at the White House or at the DNC, and, at the other end, I did not direct my

subordinates to reach any particular decision on this matter; although during my watch the Department's policy has been not to approve off-reservation Indian gaming establishments over the objections of reluctant communities. The Hudson decision reflected that policy and nothing else.

That should end this matter, and I suppose it would have ended the matter had I not muddled the waters somewhat in my letters to Senators McCain and Thompson in describing a meeting I had with Mr. Paul Eckstein on July 14, 1997. This is what happened:

Mr. Eckstein and I had been colleagues in law school and law practice. After I became Secretary, Mr. Eckstein, who practiced in Phoenix, came to represent clients in Wisconsin who supported the Hudson application. On July 14, Mr. Eckstein was visiting other offices at the Department to urge the Department to delay a decision in the Hudson case, which was ready to be made and released that day. Mr. Eckstein then asked to meet with me. Against my better judgment, I acceded to Mr. Eckstein's request. When he persistently pressed for a delay in the decision, I sought to terminate the meeting. I do not recall exactly what was said. On reflection, I probably said that Mr. Ickes, the Department's point of contact on many Interior matters, wanted the Department to decide the matter promptly. If I said that, it was just an awkward effort to terminate an uncomfortable meeting on a personally sympathetic note. But, as I have said here today, I had no such communication with Mr. Ickes or anyone else from the White House.

It has been reported that Mr. Eckstein recently made the additional assertion that I also mentioned campaign contributions from Indian tribes in this context. I have no recollection of doing so, or of discussing any such contributions with anyone from the White

House, the DNC, or anyone else.

If my letters to Senators McCain and Thompson caused confusion, then I must and do apologize to them and to the Committee. I certainly had no intention of misleading anyone in either letter. My best recollection of the facts is as I have just stated them.

The bottom line is that the Department's decision on the Hudson matter was based solely on the Department's policy not to approve off-reservation Indian gaming applications over community opposition. The record before the Department showed strong, official community opposition to the Hudson proposal. And there was no effort by the White House, directed toward me or, to my knowledge, to others in the Department, to influence the substance or even the timing of the Department's decision.

I hope I have clarified this issue. I would be pleased to answer your questions.

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20246

TC 04/17/95

Thomas Collier

Travel voucher/support docs
-trip to attend National Indian
Gaming Association annual meeting
(and give speech) to Green Bay and
RET -trip April 19-20 14 pp.

22 mp to wife

Document provided pursuant
to Congressional subpoena



TRAVEL VOUCHER (Read the Privacy Act Statement on the back)		BUREAU DIVISION OR OFFICE SIO		<input checked="" type="checkbox"/> TEMPORARY DUTY <input type="checkbox"/> PERMANENT CHANGE OF STATION		4. SCHEDULE NO.	
5. NAME (Last, first, middle initial) Collier, Thomas C.				6. SOCIAL SECURITY NO. [REDACTED]		6. PERIOD OF TRAVEL A. FROM 04/19/95 B. TO 04/20/95	
7. MAILING ADDRESS (Include ZIP Code) [REDACTED] Washington, D.C. 20240 Washington, DC 20240				8. OFFICE TELEPHONE NO 202/[REDACTED]		7. TRAVEL AUTHORIZATION A. NUMBER(S) TASA01793A01 B. DATE(S) 04/17/95	
9. PRESENT DUTY STATION Washington				1. RESIDENCE (City and State) [REDACTED]		10. CHECK NO.	
8. TRAVEL ADVANCE a. Outstanding 0.00 b. Amount to be repaid 0.00 c. Amount paid Government (Attached: <input type="checkbox"/> Cash <input type="checkbox"/> Check) 1				9. CASH PAYMENT RECEIPT a. DATE RECEIVED b. AMOUNT RECEIVED \$ c. PAYEE'S SIGNATURE		11. PAID BY	
12. GOVERNMENT TRANSPORTATION REQUESTS OR TRANSPORTATION TICKETS, IF PURCHASED WITH CASH (List for number, date, and amount paid; if cash is used, show class or classes of travel)							
AGENT'S VALUATION OF TICKET (a) 313.00		SEMI-CLASS RISK (b) AM	CLASS OF SERVICE AND ACCOMMODATIONS (c) Y	DATE ISSUED (d) 04/17/95	POINTS OF TRAVEL FROM WASH. DC TO GREENBAY, WI		
COLL-0795642		313.00	AM	Y	04/17/95	WASH. DC	GREENBAY, WI
Attend National Indian Gaming Association annual meeting (and give speech). Total number of nights commercial lodging facilities were occupied - 1. Total number of nights approved for safe lodging facilities were occupied - 1							
13. I certify that this voucher is true and correct to the best of my knowledge and belief, and that payment or credit has not been received by me from other sources, for which payment is based on the average cost of lodging incurred during the period covered by this voucher. TRAVELER'S SIGNATURE: [Signature] DATE: [REDACTED] AMOUNT CLAIMED: 125.28						NOTE: Forfeiture of pay or credit in all cases except where a forfeiture of claim (28 U.S.C. 7514) and may result in a fine of not more than \$10,000 or imprisonment for not more than 5 years or both (18 U.S.C. 207, et seq.).	
14. This voucher is approved. Long distance telephone calls, if any, are certified as necessary in the interest of the Government. (NOTE: If long distance telephone calls are included, the approving official must have been authorized in writing by the head of the department or agency to so certify (31 U.S.C. 6801).) Bruce Babbs, Secretary APPROVING OFFICIAL SIGN HERE: [Signature] DATE: [REDACTED]						17. FOR FINANCE OFFICE USE ONLY a. DIFFERENCES: INCREASE <input type="checkbox"/> DECREASE <input type="checkbox"/> (Amount)	
15. LAST PRECEDING VOUCHER PAID UNDER SAME TRAVEL AUTHORIZATION a. VOUCHER NO. b. G.D. SYMBOL c. MONTH & YEAR						16. TOTAL VERIFIED CORRECT FOR CHARGE TO APPROPRIATION (Amount) \$	
18. THIS VOUCHER IS CERTIFIED CORRECT AND PROPER FOR PAYMENT AUTHORIZED OFFICIAL SIGN HERE: [Signature] DATE: [REDACTED]						19. APPLIED TO TRAVEL ADVANCE (Appropriate symbol) \$	
19. ACCOUNTING CLASSIFICATION SIO-DD-1100.D02-125.28						20. NET TO TRAVELER \$	

SCHEDULE OF EXPENSES AND AMOUNTS CLAIMED		INSTRUCTIONS TO TRAVELER (Detailed items are self-explanatory)										Complete and attach information and substantiation of each item	
DATE	TIME	DESCRIPTION	BREAK	MEALS	TRAVEL	LODGING	OTHER	OTHER	OTHER	OTHER	OTHER	OTHER	OTHER
10/95	10/95	(Department use, per diem, or other explanation of expense)	FAST	LUNCH	OTHER	TOTAL	TRAVEL	LODGING	OTHER	OTHER	OTHER	OTHER	OTHER
04/19	6:00A	D-RES: Alexandria, VA											
04/19	7:00A	D-DCA-HASHINGTON, DC											
04/19	9:51A	A-GREEN BAY, WISCONSIN											
04/19	8:45A	Authorized Business, DCA											
04/20	9:33A	D-HOTEL											
04/20	2:45P	A-GREEN BAY, WISCONSIN											
04/20	3:00P	A-RES: OFFICE											
04/20		Subsistence											
<p>INSTRUCTIONS TO TRAVELER (Detailed items are self-explanatory)</p> <p>Col (1) If the schedule includes per diem allowances for members of employee's immediate family, show immediate names, ages, and relationship to employee.</p> <p>Col (2) Show meal rate, including tax and tip, and daily total (Col (1) + Col (2)).</p> <p>Col (3) Show meal rate (Col (1) + Col (2)).</p> <p>Col (4) Show meal rate (Col (1) + Col (2)).</p> <p>Col (5) Show meal rate (Col (1) + Col (2)).</p> <p>Col (6) Show meal rate (Col (1) + Col (2)).</p> <p>Col (7) Show meal rate (Col (1) + Col (2)).</p> <p>Col (8) Show meal rate (Col (1) + Col (2)).</p> <p>Col (9) Show meal rate (Col (1) + Col (2)).</p> <p>Col (10) Show meal rate (Col (1) + Col (2)).</p> <p>Col (11) Show meal rate (Col (1) + Col (2)).</p> <p>Col (12) Show meal rate (Col (1) + Col (2)).</p> <p>Col (13) Show meal rate (Col (1) + Col (2)).</p> <p>Col (14) Show meal rate (Col (1) + Col (2)).</p> <p>Col (15) Show meal rate (Col (1) + Col (2)).</p> <p>Col 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<p>TRAVELER'S LAST NAME</p> <p>Collier</p>													
<p>TRAVEL AUTHORIZATION NO</p> <p>TA501793A01</p>													
<p>AMOUNTS CLAIMED</p> <p>0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00</p>													
<p>TOTAL</p> <p>0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00</p>													

Document provided to Congress

06/22/95 RECEIPT CHECKLIST Vouch. 4/19/95 GREENWAY
(c) 1990 Federal Software Collic, Thoma

DATE	DESCRIPTION	COST
1. 04/19/95	Authorized Business Calls	25.78
2. 04/19/95 TO 04/20/95	Lodging Expenses	54.00

Document provided pursuant
to Congressional subpoena

Tom Collier
 [REDACTED]
 Washington, DC 20240

Arrival 04/19/95
 Departure 04/20/95

Room 1313
 Cashier
 Page 1

S T A T E M E N T Radisson Inn, Green Bay, 04/20/95

Date	Text	Room	Charges	Credits
04/19	Room Charge	1313	69.00	
04/19	Room Tax 10%		6.90	
04/19	Telephone-Long Distance		8.75	
	->#1313 : 202-208-5043			
04/19	Telephone-Long Distance		4.38	
	->#1313 : 202-208-4123			
04/19	Telephone-Long Distance		4.38	
	->#1313 : 202-208-5043			
04/19	Telephone-Long Distance		8.27	
	->#1313 : 202-208-5043			
04/19	Movies #1313		8.35	
04/19	Banquet Charge		25.00	
	Balance		135.03 \$	

Document provided pursuant
 to Congressional subpoena

[illegible]

NOT VALID FOR TRAVEL

Green Bay -

travel 313.00
per diem 1 day + night -

Bridgman
6:30 dinner ^{Kitchen}
reservation of
Resch -- he
will pick you up at
Hotel -- call
300 Main Ave
De Pere
5-10
m
[REDACTED]

GREEN BAY, WISCONSIN
APRIL 19-20, 1995
NATIONAL INDIAN GAMING ASSOCIATION ANNUAL MEETING

WEDNESDAY, APRIL 19

7:00 AM Depart National; American 2045; seat 11D

7:56 AM Arrive Chicago

8:44 AM Depart Chicago; American 4225; seat 6C

9:51 AM Arrive Green Bay

10:30 AM Speak at Annual Meeting of NIGA
Oneida Radisson Hotel
2040 Airport Drive
Grand Council Ballroom (main lobby in Iriquois complex)
Contact: Diane Wyss (from NIGA Chairman Richard Hill's office)
[REDACTED] phone
[REDACTED] fax
(hotel is directly across street from airport; courtesy shuttle transfer
telephone is in baggage claim area)

2:00 to

3:00 PM Meet Enviro Group re Fox River Restoration
Oneida Radisson Hotel
Auditorium (\$25 use fee has been paid; contact: Leslie x 510)
Probable Participants: Daniel Burke, NE Wisconsin Director, Lake Michigan
Federation; Pat King, Policy Specialist, Great Lakes Program, Sierra Club
([REDACTED]); Rebecca Katers, Ex. Dir., Clean Water Action Council; Pam
Porter, Director, Environmental Decade; Annette Rasch, Chair, Fox Valley
PCB, Cleanup Task Force; Penny Schaber, Conservation Chair, Fox Valley
Sierra Club. May attend: Brett Hulsey, Great Lakes Program Director, Sierra
Club; Susan Mudd, Director, Citizens for a Better Environment

7:00 PM Dinner with Dick Resch (connect with him re: exact time and location)
[REDACTED] office (contact: Denise Dalebroux)
[REDACTED] home

RON Oneida Radisson Hotel
[REDACTED] phone
[REDACTED] fax
Res. 13297 (you are supposed to be getting a \$269 jacuzzi suite for \$69)

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to Congressional subpoena

THURSDAY, APRIL 20

7:15 AM Fox River Coalition Breakfast
 Oneida Radisson Hotel
 Tuscarora Room
 Participants: Chuck Wilson and Jim Nellin, Fort Howard; Mayor Carpenter,
 Mayor of Nina; Bruce Baker, State of Wisconsin, Dept. of Natural Resources;
 Tom Cuene, County Executive of Brown County; Mike O'Bannon, EOP
 Group

8:45 AM Depart Radisson for airport

9:35 AM Depart Green Bay; Northwest 316; seat 19D

10:35 AM Arrive Minneapolis (do not change planes)

11:20 AM Depart Minneapolis

2:45 PM Arrive National Airport

LM0028
Document provided pursuant
to Congressional subpoena

MEMORANDUM

TO: B.J. Thornberry
Deputy Chief of Staff

THROUGH: Tim Elliott
Deputy Associate Solicitor, Division of General Law

FROM: Antonio Montes ✓
Special Assistant, Office of the Secretary

SUBJECT: Secretary Bruce Babbitt's Wisconsin Trip

DATE: May 31, 1995

Secretary Bruce Babbitt travelled to Wisconsin on April 7 - 9, 1995. This trip included both official and political business; therefore, the costs will be apportioned between the government and the political sponsor. In this trip, the Secretary went to California where he performed only official business. Then he went to Wisconsin, where he engaged in both official and political business. The Wisconsin political sponsor purchased a ticket for California to Wisconsin at a price of \$642.00. Since it would be unfair to charge the political sponsor the costs associated with the California part of the trip, we have reconstructed the trip as though it were from Washington to Wisconsin and return. The commercial airfare for the reconstructed trip is \$427. This is the maximum the political sponsor would have had to pay for the trip. The official part of the reconstructed trip is 78.6%. We have applied this percentage to the government airfare, \$264.00 for the reconstructed trip, since the United States should not pay more than its share of the government airfare. Likewise, we have determined that there is no government airfare for the portion of the trip from California to Green Bay, Wisconsin, so we credited the political sponsor with the full amount of \$642.00 prepaid. Finally, the political sponsor paid for the hotel for one night in Milwaukee. The per diem rate for the Hotel was \$67.00, so we have credited the political sponsor with paying that amount. The result of these calculations is attached. I have also attached four items to document the Secretary's travel: (1) A travel expense worksheet; (2) A chart that briefly describes each event the Secretary attended, including whether it was for official, political, or personal business, and which also documents all of the Secretary's trip expenses; (3) A copy of the Secretary's Travel Voucher for the trip; and (4) a copy of the final itinerary for the trip.





United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



JUL 14 1995

Honorable Rose M. Gurnoe
Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Dayfield, Wisconsin 54814

Honorable Alfred Trepania
Tribal Chairperson
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Honorable Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520



Dear Ms. Gurnoe and Messrs. Trepania and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes. Following receipt of this recommendation and at the request of nearby Indian tribes, the Secretary extended the period for the submission of comments concerning the impact of this proposed trust acquisition to April 30, 1995.

The property, located in a commercial area in the southeast corner of the City of Hudson, Wisconsin, is approximately 85 miles from the boundaries of the Lac Courte Oreilles Reservation, 165 miles from the boundaries of the Red Cliff Reservation, and 188 miles from the boundaries of the Sokaogon Reservation. The St. Croix Band of Chippewa Indians, one of the eight Wisconsin tribes (not including the three applicant tribes), is located on a reservation within the 50-mile radius used by the Minneapolis Area Director to determine which tribes can be considered "nearby" Indian tribes within the meaning of Section 20 of the Indian Gaming Regulatory Act (IGRA).

Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community.

The decision to place land in trust status is committed to the sound discretion of the Secretary of the Interior. Each case is reviewed and decided on the unique or particular circumstances of the applicant tribe.

For the following reasons, we regret we are unable to concur with the Minneapolis Area Director's recommendation and cannot make a finding that the proposed gaming establishment would not be detrimental to the surrounding community.

The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to this trust acquisition for gaming purposes. In addition, in a March 28, 1995, letter, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District in whose district the St. Croix Meadows Greyhound Track is located, have expressed strong opposition to the proposed acquisition. The communities' and State officials' objections are based on a variety of factors, including increased expenses due to potential growth in traffic congestion and adverse effect on the communities' future residential, industrial and commercial development plans. Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

In addition, the record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin. Their opposition is based on the potential harmful effect of the acquisition on their gaming establishments. The record indicates that the St. Croix Casino in Turtle Lake, which is located within a 50-mile radius of the proposed trust acquisition, would be impacted. And, while competition alone would generally not be enough to conclude that any acquisition would be detrimental, it is a significant factor in this particular case. The Tribes' reservations are located approximately 85, 165, and 188 miles respectively from the proposed acquisition. Rather than seek acquisition of land closer to their own reservations, the Tribes chose to "migrate" to a location in close proximity to another tribe's market area and casino. Without question, St. Croix will suffer a loss of market share and revenues. Thus, we believe the proposed acquisition would be detrimental to the St. Croix Tribe within the meaning of Section 20(b)(1)(A) of the IGRA.

We have also received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway and the potential harmful impact of a casino located one-half mile from the Riverway. We are concerned that the potential impact of the proposed casino on the Riverway was not adequately addressed in environmental documents submitted in connection with the application.

Finally, even if the factors discussed above were insufficient to support our determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors, including the opposition of the local communities, state elected officials and nearby Indian tribes, to decline to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465, to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes. This decision is final for the Department.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Anderson".

Michael J. Anderson
Deputy Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
National Indian Gaming Commission

HM document = 7

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Indian Gaming Management
MS-2070

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To: Assistant Secretary - Indian Affairs
Through: Deputy Commissioner of Indian Affairs
From: George T. Skibine
Director, Indian Gaming Management Staff
Subject: Application of the Sokaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)¹

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all

¹ References are to the application documents submitted by the Minneapolis Area Office.

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of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables. Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period was extended to April 30, 1995, by the Office of the Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of

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other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI
(Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

- 1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)
- 2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
- 3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
- 4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
- 5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**)
- 6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
- 7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
- 8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
- 9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
- 10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
- 11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
- 12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
- 13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
- 14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)

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- 15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
- 16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
- 17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
- 18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
- 19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab

***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in stating that "it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

No consultation with other State officials was solicited by the MAO. Shiela E. Harsdorf, State Representative, and twenty-eight other Representatives and State Senators sent a letter to the Secretary, dated March 28, 1995, expressing "strong opposition to the expansion of off-reservation casino-style gambling in the State of Wisconsin." The letter addresses four areas of detrimental impact.

First, the signatories cite the removal of land from the local property tax rolls. In the Findings of Fact, the MAO cites the Agreement for Government Services as evidence that the detrimental impact of placing land in trust has been mitigated. The applicant Tribes assert that the track will close, if it is not purchased by Indians, and all revenue to the local governments will cease, a potential detrimental effect of not acquiring the land in trust.

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Second, the representatives assert that "expansion of gambling is contrary to public will in Wisconsin." Elections in 1993 are cited in support. However, the 1993 referenda were primarily technical in nature, to bring the State constitution into conformance with the State-operated lottery. The representatives' letter states, "This advisory referendum showed strong support for limiting gambling to . . . dog tracks, state lottery games and existing tribal casinos." Public policy in Wisconsin embraces a State lottery and several types of Class III gaming.

Third, the letter says that off-reservation gambling may not foster economic development within the tribal nations. "People will be unwilling to travel long distances to casinos and bingo halls located in less-populous regions," says the letter. While the competitive impact of another casino is expected to affect existing Indian gaming operations, the three applicant Tribes are among those tribes in less-populous regions, who cannot draw significant customers from the market area of tribes with more urban locations. They seek to promote economic development by improving their business location.

Last, Representative Harsdorf states, "Many municipalities feel that the expansions have created tense racial atmospheres and that crime rates have increased. It is also unclear whether all tribes have benefitted from the IGRA." The Agreement for Government Services specifically addresses the impact of crime, and its mitigation. No information on racism or the disparate impact of IGRA is supplied. It is not clear that racism is impacted either by approval or disapproval of the application.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas M. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994

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Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

The Supervisors of the Town of Troy passed a resolution on December 12, 1994 in response to the Finding Of No Significant Impact (FONSI). The resolution restated the town's "vigorous objection to casino gambling at the St. Croix Meadows Facility," and reasserted "that casino gambling at the St. Croix Greyhound Racing Facility will be detrimental to the surrounding community." No evidence of detrimental impact was included in the resolution. The resolution was not submitted to the Department Interior in the application package, but was an attachment to a letter to the Secretary from William H.M. Cranmer, February 28, 1995. Neither the Town of Troy or Dr. Cranmer appealed the FONSI.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

Several thousand cards, letters, and petition signatures have been received in support of an Indian casino at the Hudson dog track.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that

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the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

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Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment (\$150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1 1/2% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all business-

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es, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to \$1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota

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casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin

In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Pear Marwick Comments for the Minnesota Tribes

On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of \$450 million in 1993, and \$495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be \$114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were \$80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market

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of \$480 million, a Non-Minneapolis Gaming Market of \$220 million, and a Wisconsin Market of \$500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over \$600 million.

The projected Hudson market share of \$80 to \$115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by \$50 million, and stimulation of the local market by a casino at Hudson is projected in the application at \$1 (\$25 million). Therefore, only \$5 to \$40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of \$1 to \$8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a \$96.8 million net profit in 1993. A reduction of \$8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At \$96.8 million, the per enrolled member profit at Mystic Lake is \$396,700. Reduced by \$8 million, the amount would be \$363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. 1, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

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It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from \$25 million in 1995 to \$12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

Market Saturation.

The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of \$500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers

The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab J, pg. 3) Six comments were

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received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime

Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the St. Paul Pioneer Press with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell 3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level

The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns

One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

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IV. Property Values

An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase

Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500, and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters' estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than

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currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities

St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning

According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water

The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage

The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

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V. Roads

The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94. The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

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to Congressional subpoena

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol. III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects \$42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of \$18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

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Hudson Dog Track Application

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay \$1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

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There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in

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Hudson Dog Track Application

reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto*

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giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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Hudson Dog Track Application

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Conduct

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<p>1 BY MR. WILSON:</p> <p>2 Q I have provided Ms. Manuel with a document that has</p> <p>3 been marked H-1, and for the record, it is a letter to the</p> <p>4 editor from Bruce Babbitt, Secretary of the Interior dated</p> <p>5 January 2nd, taken from the New York Times, and I believe it</p> <p>6 appeared on January 4 edition of the New York Times</p> <p>7 If you could take just a moment to review the letter</p> <p>8 And I will go back because there are specific things in</p> <p>9 this letter that I wanted to discuss with you</p> <p>10 In this letter that the Secretary of the Interior has</p> <p>11 stated that: "This department does not force off-reservation</p> <p>12 casinos upon unwilling communities;" and that's the second</p> <p>13 sentence of the second paragraph.</p> <p>14 My question to you is, is it Department of the Interior</p> <p>15 policy that any opposition to an off-reservation casino is</p> <p>16 sufficient to cause an application to be rejected?</p> <p>17 Mr. Elliott. Don't answer that.</p> <p>18 Jim, that question is going to one of the central issues</p> <p>19 in litigation.</p> <p>20 Mr. Wilson. I'm asking about Department of Interior</p> <p>21 policy, though, not about the litigation or anything about the</p> <p>22 litigation.</p> <p>23 I am asking about your understanding of Department of the</p> <p>24 Interior policy. Actually, I should be more specific. I am</p> <p>25 asking about it as of 1995, 1994, 1995.</p>	<p>1 Mr. Elliott. Repeat the question, please.</p> <p>2 BY MR. WILSON:</p> <p>3 Q Was it Department of the Interior policy in 1995</p> <p>4 that any opposition to an off-reservation casino was</p> <p>5 sufficient to cause an application to be rejected?</p> <p>6 [Counsel conferring with witness.]</p> <p>7 Mr. Elliott. We need to consult.</p> <p>8 Mr. Wilson. Certainly.</p> <p>9 Mr. Elliott. Okay. I think she can respond to the</p> <p>10 question.</p> <p>11 Mr. Wilson. Okay.</p> <p>12 The Witness. The answer is, yes.</p> <p>13 BY MR. WILSON:</p> <p>14 Q Well, I was going to ask you what the standard was,</p> <p>15 but you have adequately told me what the standard was. Any</p> <p>16 opposition was the way that I phrased the question, so any</p> <p>17 opposition in 1995 was sufficient to cause an application to</p> <p>18 be rejected?</p> <p>19 A Yes.</p> <p>20 Q Was this communicated to -- just let me preface this</p> <p>21 with it seems like a lot of time and effort and money went</p> <p>22 into perfecting an application. It was all relevant to the</p> <p>23 process. Was this communicated to the Ashland office or the</p> <p>24 Muncie office?</p> <p>25 A Every area office is aware what the requirements are</p>
*** Notes ***	
Page 31	Page 32
<p>1 under 151 and under Section 20. Any particular Section 20</p> <p>2 Mr. Elliott. Let me -- one minute.</p> <p>3 [Counsel conferring with witness.]</p> <p>4 The Witness. When you -- when they work with the tribes</p> <p>5 at the local level agency or the area, they know that</p> <p>6 community support is a key factor. We give them every</p> <p>7 opportunity, and I think the records in the gaming office in</p> <p>8 terms of all of the mail, the letters that have gone out with</p> <p>9 my signature, with George's signature, will verify the fact</p> <p>10 that we inform the tribes, we inform the communities that</p> <p>11 they all have an equal opportunity to present their case and</p> <p>12 to develop a record. So when I say, yes, we don't put a</p> <p>13 casino to a community that doesn't want it, I qualify that by</p> <p>14 saying, however, that the community has to have a reason for</p> <p>15 not wanting it there. It can't be just because they don't</p> <p>16 like Indians, for example.</p> <p>17 And in most cases, my experience is that the communities</p> <p>18 are concerned about environmental issues and impacts to their</p> <p>19 municipal services. My directive to the area directors since</p> <p>20 1994 and the directive before I was deputy commissioner by the</p> <p>21 then deputy commissioner is that to work with the local</p> <p>22 communities to try to either mitigate their concerns, or to</p> <p>23 resolve them. But if a community comes in without any basis</p> <p>24 for their opposition, we move forward with a -- and our record</p> <p>25 supports a positive finding that there is going to be no</p>	<p>1 detriment to the community, we move forward with a</p> <p>2 recommendation to the Assistant Secretary for approval, and in</p> <p>3 fact there is at least two cases that I was personally</p> <p>4 involved in where we did that, where the community did not</p> <p>5 have a basis for their opposition, other than they just didn't</p> <p>6 want Indians right next door to them.</p> <p>7 Q And I know you have answered this question, or at</p> <p>8 least around it, but I didn't understand what the basis for</p> <p>9 the community opposition was in this case?</p> <p>10 A Environmental concerns. They were concerned about</p> <p>11 the impact to their municipal services.</p> <p>12 Q Could those concerns have been cured?</p> <p>13 A Probably, at probably great expense to the tribes.</p> <p>14 I mean we're talking about, you know, such things as providing</p> <p>15 police services, you know, all the kinds of services that you</p> <p>16 would need to supplement when you're going to start bringing</p> <p>17 in a lot of people.</p> <p>18 Q And who made the determination that the expenses</p> <p>19 were -- who made the determination on behalf of the tribes</p> <p>20 that the expenses were prohibitive?</p> <p>21 A I didn't say that that decision was made. You asked</p> <p>22 me if they could have been corrected, and I'm giving you my</p> <p>23 opinion that probably, yes, but probably at great expense.</p> <p>24 Q Were the tribes given an opportunity to cure the</p> <p>25 specific defects?</p>
*** Notes ***	

EXHIBIT

GTS - 8

Fax Message From
Congressman

2185 Rayburn House Office Building
Washington, D.C. 20515-4903

Steve Gunderson

Third Congressional District, Wisconsin

cc: *George Sklar 10/15/95*
Don

TO: HEATHER Sibbison
ASSISTANT TO THE COUNSELOR

FAX NUMBER: _____ PHONE NUMBER: _____

FROM: STEVE GUNDERSON DAVE GUNDERSEN
FRAN McNAUGHT JOAN JACKSON
X TIM BARTL KEVIN KENNEDY
JOHN FRANK TED REBARBER
JANET PRENE SCOTT SMITH
INTERIM SCOTT STAFFORD

*file:
Dog track*

DATE: 5/1/95 # PAGES 4 (INCLUDING COVER SHEET)

COMMENTS: Comment letter: House Rec-to-Test
Aggression

This was delivered to 7229 @ 12:15 5/1



Antigo Silo Loan



Congress of the United States
House of Representatives
Washington, DC 20515-4903

02875

The Honorable Bruce Babbitt
 April 28, 1995
 Page 2

Congress passed the IGRA in large part to promote Native American economic development through gaming. At the same time, the Act sought to protect against the abuses of a burgeoning, but unregulated gaming industry. Most tribes that have developed gaming on their reservations have succeeded in significantly improving the economic conditions of their members.

Under existing compacts with the State of Wisconsin, each of the three bands applying to develop a casino in Hudson is allowed to build two casinos with blackjack facilities on its reservation. Each presently has one casino with blackjack facilities on its reservation. To increase economic opportunities for its members, each tribe may build an additional facility with blackjack without treading into the precedent-setting waters of off-reservation casinos. If your office approved the acquisition of the dog track, a national precedent would be set to encourage the development of additional off-reservation facilities when on-reservation development options are still available. For this reason, Hudson is not the place to break new ground.

In addition to setting a new precedent, proceeding with the acquisition would be detrimental to the Hudson area by further eroding relations among residents and limiting opportunities for economic development. Area residents and their local representatives oppose casino gambling. The passage of legislation allowing the dog track created many deep wounds in the city. In 1991, when a casino at the dog track was first debated, the City of Hudson recalled its mayor because he supported gaming. A year later, the City Council adopted a resolution opposing Indian gaming at the dog track. In February, the Council again voted to reject a casino.

Voters have increasingly opposed Indian gaming at the dog track. In 1992, the City of Hudson held a referendum which asked whether residents supported the transfer of the land to an Indian tribe if unspecified financial conditions were met. The results were 1,352 voters in support of the transfer and 1,288 against. However, in a 1993 statewide referendum which asked whether residents wanted to expand Indian gaming in Wisconsin, 65% of St. Croix County residents voted against expansion. In the adjoining Troy township, from which land was annexed for the track, 85% of the residents voted against expansion.

In sum, it is my conclusion that allowing a casino at the St. Croix Meadows facility would set an expansive national precedent for off-reservation gaming where none is needed. The approval would have detrimental effects on the residents by creating further divisiveness in a city where civic harmony has already been severely damaged. Further, the recent votes provide ample statistical proof of public opinion. For these reasons, I oppose the expansion of casino gambling to the St. Croix Meadows track.

02876

The Honorable Bruce Babbitt
April 28, 1995
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I would appreciate a status report on the acquisition at your earliest convenience.
Thank you for your consideration.

Best regards,

A handwritten signature in black ink, appearing to read "Steve Gunderson". The signature is fluid and cursive, with the first name "Steve" and last name "Gunderson" clearly distinguishable.

Steve Gunderson
Member of Congress

SG:tb

The only land transaction approved since enactment of IGRA for an off-reservation Class II gaming facility was for the Forest County Potawatomi Tribe. The property is located in Milwaukee, Wisconsin and the transaction was completed in 1990 prior to the establishment of the office of the Indian Gaming Management Staff and the established items to ascertain that the transaction meets the two-part determination required in Section 20.

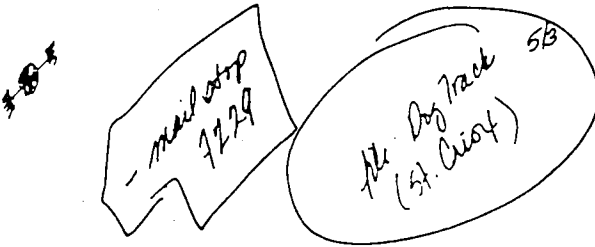
Two acquisitions were approved for lands located off-former-recognized reservations in the State of Oklahoma: The Cherokee Nation of Oklahoma acquired two parcels: one in West Siloam Springs, OK for a total of 7.808 acres (approved by Central Office: 01/18/94 and the second in Rogers County, OK for a total of 15.66 acres (approved by Central Office: 09/24/93); both are for Class II gaming facilities.

Two acquisitions were approved for land "contiguous to the reservation" for two tribes in Louisiana: Tunica-Biloxi Tribe acquired 21.054 acres in Avoyelles Parish, LA for a Class III gaming facility (approved by Central Office: 11/15/93); and Coushatta Tribe acquired 531 acres in Allen Parish, LA for a Class III gaming facility (approved by Central Office: 09/30/94).

One land acquisition was approved for a tribe with no reservation on enactment date of the IGRA and the land was not in Oklahoma: Sisseton-Wahpeton Sioux Tribe of Lake Traverse Reservation acquired 143.13 acres in Richland County, North Dakota for a Class III gaming facility (approved by Central Office: 09/30/94).

Three transactions have been prepared for off-reservation acquisitions for Class III gaming facilities in the States of Oregon, Louisiana and Michigan. None received the concurrence of the Governor; consequently, none of the proposals were taken in trust.

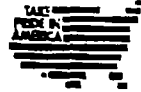
*Get it to him Monday
5/1*





United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240



BY MAIL, SUBJECT TO
Indian Gaming Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff *(Signature)*

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)¹

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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¹ References are to the application documents submitted by the Minneapolis Area Office.

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Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

- Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
- Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
- Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

- 1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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- 2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
- 3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
- 4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
- 5) Chairperson, Onondaga Tribe of Indians of Wisconsin (Vol. III, Tab 9**)
- 6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
- 7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
- 8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
- 9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
- 10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
- 11) Chairman, Bois Forte (Nez Lake) Reservation Business Committee (Vol. III, Tab 16***)
- 12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
- 13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
- 14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
- 15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
- 16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
- 17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
- 18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
- 19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab

***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indian Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

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County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment (\$150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1 1/4 % of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its *Global Gaming Almanac 1995*, is expected to increase to \$1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

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The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin

In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes

On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of \$450 million in 1993, and \$495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be \$114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were \$80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of \$480 million, a Non-Minneapolis Gaming Market of \$220 million, and a Wisconsin Market of \$500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

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Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over \$600 million.

The projected Hudson market share of \$80 to \$115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by \$50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% (\$25 million). Therefore, only \$5 to \$40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of \$1 to \$8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a \$96.8 million net profit in 1993. A reduction of \$8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At \$96.8 million, the per enrolled member profit at Mystic Lake is \$396,700. Reduced by \$8 million, the amount would be \$363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from \$25 million in 1995 to \$12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

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Market Saturation.

The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of \$500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts**1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY**

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers

The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime

Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

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3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level

The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns

One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values

An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkad, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase

Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

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2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities

St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning

According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water

The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage

The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads

The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

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The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, "... it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

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Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects \$42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of \$18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay \$1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

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St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

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Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 — a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

Hudson Dog Track Application

are protected by IGRA from the out-stretched hand of State and local governments. If state local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

DRAFT

Hudson Dog Track Application

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DRAFT

Author: George Skibine at -ICSIAE
 Date: 7/8/95 5:36 PM
 Priority: Normal
 Receipt Requested
 TO: Miltona R. Wilkins
 TO: Tom Hartman
 TO: Paula L. Hart
 TO: Tina LaRocque
 Subject: Hudson Dog Track

----- Message Contents -----

I have left on Tona's desk the redrafted version of the Hudson letter, per Duffy and Heather's instructions, along with the disk I used. Please make sure it is put in final form, and brought up to Heather first thing on Monday. Please have copies made for Bob Anderson, Kevin, ~~Froy~~ and Hilda. The Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes Area. Also, give Larry a copy of this message, and tell him to contact Tom Sweeney and keep him advised of any development on Hudson letter. I do not have a copy of the original Hudson letter draft, because it is no longer on my disk (George Skibine Docs). However, I cc: mailed that document to some of you and to SOL if it needs to be retrieved.



Hudson Star-Observer
2/10/94

Thompson says he 'won't stop' casino at dog track

By Doug Stohberg

Gov. Tommy Thompson said Friday that he will not stop the establishing of a casino in Hudson if the concept gains approval during other steps of the process.

"I will not promote and I will not block," Thompson said. "I'm on the tail end of the process, and if everyone else, including the local people, approves it before me, I won't stop it."

Thompson made the remarks during a brief question-and-answer session following a speech in Hudson to kick off the community's Hot Air Affair.

When asked if the referendum in Hudson in December 1992 indicated local support, Thompson responded "Yes."

In that election, Hudson voters approved the concept of a casino at the dog track 1,351 to 1,288 — a margin of 63 votes.

The only approval needed in the process is the Department of Interior's Bureau of Indian Affairs and the governor. The governor's comments seem to leave the fate of a casino in Hudson in the hands of the BIA.

The governor has said that he will refer the question to the state's gaming commission for a recommendation. With the 1992 referendum results and potential BIA approval, however, the governor appears to be positioning himself for possible approval of a casino in Hudson.

Thompson has softened his position on casinos considerably since December 1992 when he spoke against the expansion of gambling. At that time he said the closeness of the vote showed that the "community is evidently not united behind the plan."



GOV. TOMMY THOMPSON spoke in Hudson Friday morning at a Hot Air Affair "kickoff" breakfast. Answering questions later, Thompson said he "will not block" a casino if those ahead of him approve the concept. Staff photo by Doug Stohberg



02248

[The deposition of George Tallchief Skibine—Day 2 follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: GEORGE TALLCHIEF SKIBINE—DAY 2

WEDNESDAY, JANUARY 14, 1998

The continuation of the deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 12:50 p.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: James C. Wilson, Senior Investigative Counsel; Kenneth Ballen, Minority Chief Investigative Counsel; and Michael J. Yeager, Minority Counsel.

For MR. SKIBINE:

TIMOTHY S. ELLIOTT, ESQ.
Deputy Associate Solicitor-General Law
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Mr. WILSON. We are on the record. Thank you very much, Mr. Skibine, for resuming today. We will try and pursue this as quickly as possible.

Just to finish one thing we were talking about yesterday, there was a second meeting that you attended with—

Mr. ELLIOTT. Mr. Wilson, may I interrupt for a second?

Mr. WILSON. Oh, absolutely.

Mr. ELLIOTT. As quickly as possible is the maximum of one-half of an hour. You represented yesterday afternoon that, as we were closing, that you could wrap it up in a half an hour, perhaps 15 minutes, so Mr. Skibine is here for a half an hour, and then he is going back to the office for business, and then we will start Mr. Anderson and we will talk about his deposition at that time.

Mr. WILSON. Okay. Well, that may necessitate us bringing Mr. Skibine back at a different time.

Mr. ELLIOTT. If we can mutually agree at a time, we will do it.

Mr. WILSON. Okay.

Half an hour from when? Do you have a watch?

Mr. ELLIOTT. From now.

Mr. WILSON. From now, all right.

EXAMINATION BY MR. WILSON:

Question. After the second meeting with—at the second meeting with Mr. Oberstar that you attended with Mr. Duffy and Mr. Collier, did anyone mention calling Leon Panetta?

Answer. No one did, no.

Question. No one mentioned that at the meeting?

Answer. I don't recall that, no.

Question. Were there any lobbyists at the meeting?

Answer. None that I recall, no.

Question. You don't recall any lobbyists being at the meeting?

Answer. No.

Question. Do you recall anybody taking notes at the meeting?

Answer. Not specifically. It's possible that an aide to Mr. Oberstar took notes. I don't remember.

Question. Did Mr. Duffy inform you directly or indirectly that he wanted the decision to deny the Hudson Dog Track application to be based on IGRA and not on section 465 of IRA?

Answer. No, he did not.

Question. He did not. Did Mr. Duffy advocate the view that local communities did not have to provide any evidence—is it true that Mr. Duffy advocated the view that the local communities did not have to provide any evidence that the proposed Hudson casino would be detrimental?

Answer. Can you repeat the question?

Question. Sure. Is it true that Mr. Duffy advocated the view that local communities did not have to provide any evidence that the proposed Hudson casino would be detrimental to the local community?

Answer. No, I don't think that's true.

Question. Did he indicate to the contrary in that case?

Answer. I think he indicated that he was concerned with the impact on the local community.

Question. Right. But did you ever have a discussion with him as to whether evidence of detriment to the community had to be presented?

Answer. Yes, I did.

Question. And what did he tell you about that?

Answer. Well, I think that his view was that whatever evidence that the community provided—from what I recall, whatever evidence the community provided was important, and I think his view was essentially that he would not—he didn't want to substitute his judgment for the opinion and views of the community.

Question. So did he indicate to you that any evidence would be sufficient?

Answer. You would have to ask him. I'm not really—I can't recall exactly precisely what his exact views were.

Question. Was that consistent with the standard that IGMS used to analyze applications to take land into trust for off-reservation gambling purposes?

Answer. Under section 20?

Question. Yes.

Answer. Yes. Under section 20, I think that the IGMS looked for evidence of detriment.

Question. Right. But he was indicating that whatever evidence was provided by the community was sufficient; is that correct?

Answer. Yes. I think at this point, yes.

Question. So he did not indicate that there were any standards for analyzing that evidence whatsoever?

Answer. You'd have to ask him.

Mr. BALLEEN. Do you recall what his point of view was specifically?

Mr. WILSON. Actually, I'm going to go right through. I have a half an hour, and I'm going to try and limit questions. So if you wouldn't mind letting me try to work through this.

Mr. BALLEEN. Well, I'm going to enter an objection for the record. I do mind, because the amount of Majority compared to Minority questions is astronomically different, and if I have a quick follow-up question, it's in the interest of everyone—

Mr. WILSON. I agree, but we have a bit of a problem here, because counsel for the Department of the Interior has suggested that he is going to limit us strictly to half an hour, and given that limitation, I don't want to bring Mr. Skibine back. I'm very concerned that if we have to go for 34 minutes, I will bring him back for 4 minutes, and I don't want to bring him back for 4 minutes, and you are indicating that you will have him brought back for 4 minutes.

Mr. ELLIOTT. No. I said if there is a mutually convenient time. He has a schedule to keep. He has work to do. He was here for over 7 hours yesterday, and I absolutely resent the innuendoes. I resent the argumentative nature of what you are doing. I don't believe you are asking questions to get at the facts in this case, and I will say something about that in the next deposition, in the interest of allowing you the half-hour.

Mr. WILSON. Okay. That took presumably time away from me, correct, for a statement?

Mr. ELLIOTT. The half-hour is Mr. Skibine's time.

Mr. WILSON. But your speaking to me now is taking time of my half-hour; correct?

Mr. ELLIOTT. Yes, sir. I'm trying to be as short as possible. I have a statement I'm going to make. I decided not to make it at the beginning of this because of limitations on the time.

Mr. WILSON. We may as well have that statement now.

Mr. ELLIOTT. No; go ahead.

EXAMINATION BY MR. WILSON:

Question. Was it your understanding at the time that Mr. Duffy was speaking on behalf of Secretary Babbitt and that this was Secretary Babbitt's view on the issue of local opposition?

Answer. No, it was not.

Question. Now, Mr. Duffy's position that any local opposition would be sufficient to deny an application for a casino, or for land to be taken into trust for an Indian

gaming facility, goes to the heart of the matter of any application for off-reservation gambling by any Indian tribal entity; is that correct?

Answer. Yes.

Question. And—

Mr. BALLEEN. I'm sorry, I'm going to object. I don't think that was his testimony, that Mr. Duffy's view that any local community opposition was sufficient.

The WITNESS. The question is, it goes to the heart of.

Mr. BALLEEN. Right, but the premise of the question was Mr. Duffy's view of any local opposition.

The WITNESS. No, no. Well, whatever I said. I don't know.

EXAMINATION BY MR. WILSON:

Question. Okay. Let's work back. What was the standard that Mr. Duffy articulated for local opposition?

Answer. I cannot recall exactly. I think you would have to ask him. He would be a much better person to respond as to what his views are on the subject. I can only say that I recall that he had—he articulated a concern—concerns he had with the local opposition—with opposition from the local communities, and that he didn't think that under section 20 we should substitute our judgment—I mean the Federal Government's judgment for the views of the local community when they essentially submitted their opposition to an off-reservation gaming casino within their community.

Question. Understood.

Answer. That's as far as I can go. Any further elaboration of Mr. Duffy's view should come from Mr. Duffy.

Question. Okay. Did Mr. Duffy make any representations to you about views submitted by the local community in support of a proposed off-reservation gaming facility?

Answer. Made any representation?

Question. To you, yes, about support by the local community.

Answer. Sure. It was—I mean, when you are going to discuss the opposition, you are going to discuss whether there is support from the local community, and so that was discussed.

Question. How did you—how did he suggest, or did he suggest, that you weigh opposition and support against each other?

Answer. I think that he viewed the views expressed by the elected bodies of the communities and by elected representatives as representative of the opinion and the views of the local community.

Question. In 1995, were you aware of any political pressure on the Secretary or Mr. Duffy to deny approval of the proposed Hudson casino?

Answer. No, I was not aware of any such pressures, except the meeting that we had on February 8th with the congressional—I was not aware of any such political pressures except as communicated at the February 8th, 1995, meeting that I attended with Congressman Oberstar and others.

Question. Okay. And what about the second meeting that you attended with Congressman Oberstar, with Mr. Collier and Mr. Duffy?

Answer. Yes. Well, I cannot recall. I just cannot recall. I did not take notes of this meeting, and I cannot recall the substance of the discussion. I can only assume that Congressman Oberstar's views did not change from the February 8th, 1995, meeting.

Question. Did Secretary Deer approve a proposed trust acquisition in May of 1995 for the Pequots in Connecticut for gaming purposes?

Answer. I'm not aware of approval of a Pequot acquisition for gaming in May of 1995.

Question. In May of 1995, you were the director of the IGMS staff; correct?

Answer. Yes, I was.

Question. Did you provide any recommendations to the Secretary on any Pequot matters in May of 1995?

Answer. No, I did not on that matter. If it exists, it was not handled by the Gaming Office.

Mr. WILSON. I'm at a bit of a disadvantage here. I'm not quite certain when my half-hour period began. How much time do I have, Mr. Elliott?

Mr. ELLIOTT. 20 minutes.

Mr. YEAGER. By my count, you have consumed 10 minutes.

Mr. ELLIOTT. Yes, that's right.

EXAMINATION BY MR. WILSON:

Question. We discussed yesterday the concern over the St. Croix Scenic Waterway. Do you know whether the concerns identified related to the St. Croix Scenic Waterway could have been cured if the concern was brought to the attention of the tribes?

Answer. I cannot answer that. I don't know the answer to that, but I think that what would have needed to be done, according to my environmentalist, was for the compliance with NEPA to be redone, or reexamined in light of that.

Question. Did you ever tell the three tribes that the NEPA process had to be redone?

Answer. No, I don't think we did. I think that was the—I suppose that redoing the EA to take that into consideration would have essentially—to take the proximity of the St. Croix Waterway, according to my environmentalist, was necessary. I don't recall discussing that with the three tribes, no.

Question. Do you know of any consult—did you have any consultations with the three tribes regarding the proposed casino after May 31 of 1995?

Answer. I don't—offhand, I don't remember if we had meetings with them.

Question. And just—and I apologize, I may be covering ground not only that's been covered before, but that I may have covered, but to your knowledge, was the June 29 letter that was prepared for the possible signature of Assistant Secretary Deer—was that, to your knowledge, the first time that she might have known whether the proposed Hudson casino application would be denied?

Answer. I don't know when Secretary Deer—what Secretary Deer knew.

Question. And I apologize, I don't remember whether you testified yesterday or not as to whether that was ever transmitted to her.

Answer. It was transmitted up the chain of command by my secretary and—you know, I cannot answer as to whether she saw it or whether she recused herself before she saw it. You'd have to ask her.

Question. Who did you tell—well, by her, I assume you mean your secretary. Who did you—what did you tell your secretary to do with the letter, the draft letter?

Answer. I think that the draft had to be sent to the solicitor and Secretary's office for their consideration.

Question. The solicitor and Secretary?

Answer. Yeah, and the Assistant Secretary's office.

Question. So your understanding is that the letter would have been transmitted to the Assistant Secretary's office directly from your office?

Answer. Yes, and to the deputy commissioner, also.

Question. Why did you draft the letter for Ms. Deer without first asking for her views on the matter?

Answer. Because I did not know who was going to sign the letter. I assumed that, as we discussed yesterday, it would be either signed by the Assistant Secretary or signed by the deputy commissioner. And that's standard procedure. All letters that come from the Bureau of Indian Affairs that are essentially going to outside parties are sent—are signed by the Assistant Secretary, the Deputy Assistant Secretary, or the deputy commissioner, from my perspective, so it was essentially standard, just what I thought would happen.

Question. Did you speak with Mr. Anderson about his views on the proposed Hudson casino before the draft letter was presented to him for signature?

Answer. Yes, yes, I did. We did cover that yesterday, I think.

Question. Did Mr. Duffy ever discuss with you whether he reviewed the area director's report?

Answer. I cannot recall whether he discussed that with me.

Question. Can you recall whether he discussed Mr. Hartman's report?

Answer. Not specifically.

Question. In a general fashion?

Answer. No.

Question. Are you aware that Ms. Sibbison never reviewed the area director's report?

Answer. No, I'm not aware.

Question. Are you aware that Ms. Sibbison never reviewed Mr. Hartman's report?

Answer. No, I'm not aware of that either.

Question. Are you aware that Ms. Sibbison never reviewed any part of the administrative record?

Answer. No, I'm not aware of that.

Question. Are you aware that Mr. Anderson never reviewed the area director's report?

Answer. No, I'm not.

Question. Are you aware that Mr. Anderson did not review Mr. Hartman's draft?

Answer. I'm sorry. No, I'm not aware. I don't know what other people reviewed.

Question. Can you—are you able to represent to us whether the decisions or the observations made about the Hudson Dog Track application by Mr. Duffy were based on materials contained in the record?

Mr. ELLIOTT. Objection. He has told you he is not aware whether Mr. Duffy reviewed the administrative record, and you are now asking him whether his representations were based on the administrative record. He can't answer that question.

Mr. WILSON. Okay. That's fair enough.

EXAMINATION BY MR. WILSON:

Question. Was Mr. Anderson involved in any meetings where the—to your knowledge, where the merits of the proposed Hudson casino application were discussed?

Answer. I believe he was.

Question. Which were those meetings?

Answer. I cannot recall the dates specifically of any meeting that we had.

Question. Do you recall Ms. Deer being present in any meetings during which the proposed benefits of the Hudson Dog Track application was discussed?

Answer. How can I—I do not recall Ms. Deer being present at a meeting.

You know, to make a point aside, I think the question that I find the hardest is when you ask me to remember someone else's views or interpret someone else's views and whether someone participated and why they expressed views that they did. I find that really difficult, and I just—I'm sorry I cannot be more precise. It was a few years ago, and, frankly, I'm not in other people's minds.

Question. I understand. And I only ask those questions because ultimately you will be presented with documents where you were recounting what their views were, and you knew at the time, and so you may have forgotten since then, you may not, and that's something I don't know. But I ask the questions in good faith, because if you still remember what their views were—for example, if you attended a meeting where somebody was vehement in their opposition or vehement in their support, you might remember that so-and-so was very, very supportive of something, and so I ask you those questions. If you don't remember, you don't remember. But you will have an opportunity to look at documents at a later date—

Mr. BALLEEN. Well, that's not fair, Mr. Wilson, and I object. If you have documents that will refresh his recollection when he doesn't recall, it's only fair to the witness to show him the documents.

Mr. WILSON. Mr. Ballen, I have less than 10 minutes.

Mr. BALLEEN. I don't care.

Mr. WILSON. You cut me off.

Mr. BALLEEN. I'm objecting because it is unfair. If you have documents which would refresh his recollection, this witness's recollection, you should show him the documents as a matter of fundamental decency and fairness, not ask him questions when he is under oath, and he says he doesn't recall, and then say, you will be shown the documents at a later date. That is unfair.

Mr. WILSON. Mr. Ballen, I have been cut off by you and by Mr. Elliott.

Mr. ELLIOTT. Well, I'm going to cut you off a little more. If you are concerned about wasting the time, you ought to be showing him the documents to let him refresh his recollection with those documents now, and not asking him a string of questions of whether he recalls when he has told you time and again he doesn't recall. Show him the documents and speed the process up.

Mr. WILSON. Mr. Elliott, Mr. Skibine has not told me time and time again he doesn't recall everything we have discussed. He has recalled many things. It's been very productive.

Mr. ELLIOTT. He has spent the last 5 minutes here telling you he didn't recall. He got to the point where he himself was exasperated enough to tell you he can't get in other people's minds. He doesn't recall participation. It's at that point you say you have documents to show him. Show him the documents.

Mr. WILSON. You know as well as I that he has recalled some things, he hasn't recalled other things. To make the representation that it's an unfair tactic for a lawyer to ask a question about meetings he attended, conversations he had, is patently frivolous.

Mr. ELLIOTT. The unfair representation is that you have documents to show him and you won't.

Mr. BALLEEN. It's only fair. You are asking the witness, and you say you are going to show him the documents later on, but you are not giving him an opportunity to review the documents now.

Mr. WILSON. Mr. Ballen, as you well know, I have been cut off.

Mr. BALLEEN. It's an objection of fairness.

Mr. WILSON. I understand. I will do what I could do. And I asked about this, and we will see about rescheduling and all that. Obviously, the representation here is that you don't want this to continue, Mr. Elliott doesn't want this to continue, and that's—I understand that. That is well taken.

Mr. BALLEEN. I simply entered an objection on the record, and I will restate it again. If you have documents that will refresh his recollection of this particular witness, the fair and decent thing to do is to show him the documents so his recollection can be properly refreshed, not wait until a hearing to spring it on him. That's all I'm saying. It has nothing to do with time, calling him back, or anything else.

Mr. WILSON. I have three more questions today, and that's all I will ask, and I will be able to end this process.

EXAMINATION BY MR. WILSON:

Question. Do you have any knowledge regarding who Mr. Don Fowler of the DNC spoke to at the Department of the Interior regarding the proposed Hudson application?

Answer. I do not.

Question. Do you have any knowledge of whether Mr. Harold Ickes talked to anyone at the Department of the Interior regarding the proposed Hudson application?

Answer. I do not.

Mr. WILSON. Okay. At this point, on behalf of the Majority, thank you very much for appearing here today. I recognize you did come back. I apologize for the acrimonious exchanges we have had. From my perspective, I try and comport myself with some degree of reasonableness, and I apologize that you are subjected to our discussions back and forth. That's not an appropriate use of your time, and for that, I'm sorry.

Mr. Ballen?

Mr. BALLEEN. Thank you. I have less than 3 minutes of questions.

EXAMINATION BY MR. BALLEEN:

Question. Sir, were you ever contacted by the White House about the Hudson casino matter?

Answer. I was not.

Question. Were you ever contacted by the Democratic National Committee about the Hudson matter?

Answer. I was not.

Question. Were you ever contacted by the Clinton-Gore campaign about the Hudson matter?

Answer. I was not.

Question. Did anyone at the White House, Democratic National Committee, or the Clinton-Gore campaign influence your decision in any regard with the Hudson Dog Track matter?

Answer. No.

Question. Were you aware of anyone else at the Department of Interior being contacted by the White House, the Democratic National Committee, or Clinton-Gore about the Hudson matter?

Answer. No, I am not.

Question. Let me be very clear about this question. Were you pressured in any way whatsoever by anyone to reach a particular decision in the Hudson matter?

Answer. No, I was not.

Question. When did you conclude that the application would be rejected?

Answer. I think I have testified to that before, and at some point in—

Mr. WILSON. Mr. Ballen, I would like to object to this. You have objected numerous times to me asking questions and interrupting my flow of concentration and saying I have asked a question, and you know very well that he has testified to that already.

Mr. BALLEEN. Well, that question is a predicate to the next question. It was in context. I will withdraw the question and ask it this way.

EXAMINATION BY MR. BALLEEN:

Question. Were you in any way pressured to reach a decision by a certain date?

Answer. No, I was not.

Question. Do you know whether the letter was issued on July 14th, 1995, as opposed to any other date?

Answer. No, I don't know.

Question. But you had concluded by that time that the application would be rejected?

Answer. By July 14th?

Question. Yes.

Answer. The decision was issued on July 14th.

Question. So you had—personally, you had already concluded that by the end of June; isn't that correct?

Answer. My recommendation was made on June 29th.

Question. And would your decision have changed if a letter wasn't issued on that date? Did the date make any difference?

Answer. No. I think that there is—there is an e-mail that indicates that—as we discussed yesterday, that I believe the Secretary's office wanted the decision issued fast at some point because of Secretary Deer's upcoming visit to the Great Lakes area. I think we talked about that.

Question. Did that have any effect on the substance here?

Answer. Not to me, no.

Question. And you made the decision based on the facts; correct?

Answer. Based on the record. I made my recommendation of June 29th based on the record.

Question. And you agreed with the ultimate decision in this matter?

Answer. I—well, we discussed that at length.

Question. In terms of the legal, but the ultimate decision rejected this application?

Answer. My recommendation on June 29th was that the Secretary should not exercise his discretionary authority to take the land into trust under the Indian Reorganization Act.

Mr. BALLEEN. I have nothing further.

EXAMINATION BY MR. WILSON:

Question. Mr. Skibine, what's your understanding of Mr. Elliott's representation of you here today? Is he representing you in a personal capacity?

Answer. No. My understanding is that he is not. He is representing—he is the Department's attorney.

Mr. WILSON. I have no further questions. Again, thank you very much for your appearance here today.

The WITNESS. I want to say thank you. I want to say that the adversity and adversarial nature of these last 8 or so hours has made it extremely uncomfortable to be able to answer factual questions, that I understand that this is the nature of the proceeding. I think it is extremely unfortunate, but be that as it may.

Mr. WILSON. Thank you very much.

[Whereupon, at 1:17 p.m., the deposition was concluded.]

[The deposition of Jennifer O'Connor follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: JENNIFER O'CONNOR

MONDAY, SEPTEMBER 15, 1997

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 10:05 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Greg Zoeller, Majority Counsel; Edward Eynon, Majority Staff; Matthew Ebert, Majority Staff; Bob Dold, Majority Staff; and Andrew J. McLaughlin, Minority Counsel.

For MS. O'CONNOR:

SCOTT L. NELSON, ESQ.
Miller, Cassidy, Larroca & Lewin, LLP.
2555 M Street, N.W.
Washington, D.C. 20037-1302

Mr. ZOELLER. Good morning.

On behalf of the members of the Committee on Government Reform and Oversight, I want to thank you for appearing at the deposition. This deposition will be transcribed by the House reporter, who is also a notary public, who will place you under oath. So if you would

THEREUPON, JENNIFER O'CONNOR, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. ZOELLER. Just for the record, I will note that my name is Greg Zoeller. I will be representing the Majority counsel at the deposition, and I will ask everybody to state their name again for the record. We will just go around the table.

Mr. EYNON. Edward Eynon.

Mr. McLAUGHLIN. I am Andrew McLaughlin. I am the designated Democratic counsel.

Mr. NELSON. Scott Nelson. I am counsel for the witness.

The WITNESS. Jennifer O'Connor, the witness.

Mr. ZOELLER. Could you spell your name for the record?

The WITNESS. J-E-N-N-I-F-E-R, O, apostrophe, C-O-N-N-O-R.

Mr. EBERT. Matthew Ebert, E-B-E-R-T.

Mr. ZOELLER. Your sworn testimony here has the same effect and force as if you were testifying before the full committee. I will ask you a number of questions generally. If you have any questions about my question, please feel free to stop me and ask me to either repeat it or explain the question.

If you don't remember something, please tell me that you don't remember. If you have a general idea of the gist of what I am asking you about, please just explain what you do recall.

Whenever I ask about the source of information, you are not supposed to guess, but if you have any recollection of where you remember having heard or seen a document or something like that, please explain as much as you can about where the information comes from.

I believe you were provided some material regarding the background of the investigation and your appearance here today. The scope is outlined in House Rules X and XI. The committee is engaging in a wide ranging review of possible political fund-raising improprieties.

Mr. McLAUGHLIN. The scope is outlined in House Rules X and XI?

Mr. ZOELLER. The authority of the scope.

Mr. McLAUGHLIN. The authority is outlined, not the scope.

Mr. ZOELLER. The committee is engaging in a wide-ranging review of possible fund-raising improprieties and violations of law. Pages 2 through 4 of the House Report, that I believe we sent your counsel a copy of, provides a little more of the scope. Is that correct?

Mr. McLAUGHLIN. It's the Rules Committee view of the scope. It is not binding on this committee. It certainly hasn't been.

Mr. ZOELLER. It encompasses new matters which may have arisen since the original report.

The committee has been granted specific authorization to conduct this deposition under House Resolution 167. Committee Rule XX, which I believe the witness was also provided a copy, outlines the ground rules for the deposition.

I will be asking questions for the Majority. The Minority counsel will then have an opportunity to ask questions. After the Minority counsel, there is a new round. So we will have it in rounds, if necessary.

If any Members of Congress come at any point, we will stop and give the Member an opportunity to ask their questions immediately, if they prefer.

Your attorney will be allowed to advise you of any rights and can stop the question at any time.

Any objections raised by your counsel will be required to be stated for the record. If there is a debate over whether to answer or not, the Majority and Minority will discuss it, and after that, there is a whole series—a process to break all ties, let's say.

If you are instructed not to answer, the process will be that the Majority and Minority counsel confer. Objections not resolved that way will go to the chairman or a member of the des—that's designated by the chairman.

The deposition is considered taken in executive session, which means that it may not be made public. So this won't be made public without the consent of the full committee.

You are asked to not discuss this with anybody, other than your attorney. And after the deposition, we usually have fairly quick transcription available, somewhere

within a few days. That will be provided by your counsel, who can either come in here—I think we have made some liberties to send it to people. After you have received the transcript, there is 5 days to review it for accuracy, and, again, there is another process that, if you have any corrections that are either substantive in nature or technical, there is a process to correct the record.

Do you understand everything I have kind of outlined?

The WITNESS. Yes.

Mr. ZOELLER. Any other questions from anybody before we go on?

Mr. McLAUGHLIN. Before we go on, I will make my two statements for the record. The first is, I want to note that the hearings for this committee are beginning in 2 days, and the Democratic side requested that this deposition be cancelled or at least postponed until after the hearings. I want to note that that request was not honored by the Republicans, and so we are sitting here today within 48 hours of hearings, deposing somebody who has nothing to do with the subject matter of the hearings.

Second, I want to note that, pursuant to House Rule XI (2)(k)(8), pursuant to that rule, objections as to pertinence and relevancy are the province of the full committee and not the chairman alone to decide. Accordingly, any rulings by the committee are appealable to the full committee.

That's all I have.

Mr. ZOELLER. Okay. Just a few more kind of rules for the benefit of the court reporter. Since you are an attorney, maybe this is redundant. But always try to answer yes or no rather than any nonverbal communication which can't be recorded for the record.

And, again, there is an assumption when people read the transcript that it is generally understood. So, again, any questions as to exactly what I am trying to elicit in terms of an answer, please kind of stop me and make it clear that you understand what is being asked.

There is usually a little bit of lag between questions, just to orient. I will try not to stop you in the middle of an answer, and try not to stop me in the middle of a question, because, again, just for the clarity of reading the record, it gets to be somewhat disjointed if we just have too much of an informal discussion.

EXAMINATION BY MR. ZOELLER

Question. Let me start with a little bit of your background. I did read your earlier deposition that was taken before this committee last year. When exactly was that?

Answer. I don't remember exactly.

Mr. McLAUGHLIN. March 29th, 1996.

The WITNESS. Thanks.

EXAMINATION BY MR. ZOELLER:

Question. And I believe you testified that you attended Harvard.

Mr. McLAUGHLIN. Counsel, I am going to object to any questions that were already asked and answered in that prior deposition.

For clarification, has your educational status or work history changed since March of 1996?

The WITNESS. Nope. Everything I said then is still accurate.

Mr. McLAUGHLIN. Why don't we skip over these questions?

The WITNESS. The only difference is, I have graduated from law school now. At that time, I hadn't yet.

Mr. McLAUGHLIN. I object. It has been asked and answered in a prior deposition before this committee.

Mr. ZOELLER. Thank you. But if you don't mind, I will ask a few things that were not asked.

Mr. McLAUGHLIN. Counsel, it is bad enough that you are wasting our time taking this deposition.

Counsel, can I finish my statement for the record? We are making a record here. It is bad enough that you are holding this deposition 2 days prior to the onslaught of hearings. I would suggest that we try to move it as quickly as possible by not asking information that has already been asked and stated under oath for the record before this committee. You are wasting my time, the witness' time, counsel's time.

Proceed if you wish.

EXAMINATION BY MR. ZOELLER:

Question. At Harvard, was there anybody that you met that you later worked with at the White House or in any of the committees or any of the campaigns that you worked with?

Mr. McLAUGHLIN. Objection. As to Clarissa Cerda, that has been asked and answered.

The WITNESS. I am sure that there was. I offhand can't really think of who, but I am sure probably many people.

EXAMINATION BY MR. ZOELLER:

Question. But there is nobody that you remember from your days at Harvard—what year did you graduate?

Answer. '87.

Question. So within your class, there was nobody else that you worked with directly in the White House?

Mr. McLAUGHLIN. I am going to add another objection as to relevancy. Why don't you ask as to particular individuals who may be relevant to the subject matter of the investigation, and not fish around.

Mr. ZOELLER. That would be fine.

EXAMINATION BY MR. ZOELLER:

Question. Just anybody that you worked with in the White House that is subject to this.

Answer. I mean, there were a lot of people.

Question. Such as?

Answer. Sylvia Matthews was in my class. I mean, there is a lot. It would be helpful if you could ask about specific people, or else I know I will forget people. There are a lot of my classmates that are in this town.

Question. But specifically in the White House.

Mr. McLAUGHLIN. Counsel, I am going to object for the record again. Would you like to state for the record the pertinency of this line of questioning? It doesn't go to background certainly.

Mr. ZOELLER. It doesn't.

Mr. McLAUGHLIN. It certainly doesn't go to any kind of relevant background as to this witness' life experience in any way that broadens in a meaningful way the testimony that she gave to this committee in March 1996.

Mr. ZOELLER. Okay.

Mr. McLAUGHLIN. Are you declining to state for the record the pertinency of your questions?

Mr. ZOELLER. Yes.

Mr. McLAUGHLIN. You are? Pursuant to Deutch and Watkins, you are not fulfilling the obligations laid down by the Supreme Court for congressional investigations. But go ahead.

Mr. ZOELLER. Okay.

EXAMINATION BY MR. ZOELLER:

Question. So I understand you might forget a name or two, but in your years at Harvard, were there specific people that you worked with in the White House that's subject to—

Mr. NELSON. That question actually has been asked and answered. The answer was, yes, there were people that she worked with.

EXAMINATION BY MR. ZOELLER:

Question. And who were those people?

Mr. McLAUGHLIN. And I will renew my objection to this irrelevant questioning. The WITNESS. Among the couple that come to mind are Clarissa Cerda and Sylvia Matthews.

EXAMINATION BY MR. ZOELLER:

Question. Thank you.

Then you had said you had a graduate degree, but if you would, where did you go to school and what was the degree in?

Answer. Columbia University. It was a master's in public administration.

Mr. McLAUGHLIN. I will note again that Columbia was given as an answer in the prior deposition. I am sorry you didn't notice that.

EXAMINATION BY MR. ZOELLER:

Question. What was the year you graduated?

Answer. '93.

Question. Okay. Again, people you may have worked with in the White House or in campaigns that are subject to this investigation, were there people that you met in Columbia?

Mr. McLAUGHLIN. That's a whole bunch of questions buried in one, and I will object as to the relevancy and as to the form.

EXAMINATION BY MR. ZOELLER:

Question. Did you understand the question?

Answer. Which campaigns are we talking about? Are we talking about the '96 campaign?

Question. Well, I believe you were in the primaries. So let's say '92 primaries or the '92 or '96 campaigns.

Answer. I think there were a lot of people I went to school with who were volunteers in the primary.

Question. Anybody that you worked with in the White House?

Answer. Who was at Columbia with me? I don't think so. There might be; they just don't come to mind.

Question. Okay. And I think your last deposition, you stated you were attending Georgetown Law School and you have now graduated.

Answer. Yes.

Question. And congratulations.

Answer. Thanks.

Question. Earlier in the first deposition, you had stated you worked for both Borough President Dinkins and Messinger. What was your role in those administrations?

Mr. McLAUGHLIN. Objection. This is again totally irrelevant.

The WITNESS. I was a speech writer for Borough President Dinkins, and in Borough President Messinger's office I was a press aide and a deputy press secretary for a while, and then I was an economic policy development analyst for a while.

EXAMINATION BY MR. ZOELLER:

Question. Okay. In 1992, you had stated you worked on the New York primary. What was your role in that?

Answer. I was the field director for the State.

Question. Okay. Did you work out of the main office or were you traveling? What was your general duties?

Mr. McLAUGHLIN. Objection as to relevance.

The WITNESS. I was in the main office.

EXAMINATION BY MR. ZOELLER:

Question. Okay. Who was your immediate supervisor, boss?

Answer. Kevin Thurm, T-H-U-R-M.

Question. And was he the director?

Answer. Yes.

Question. Okay. For the New York primary, what was your relationship? How did you work with Harold Ickes, if at all?

Answer. He was the chairman, so he was a layer above Kevin, and I worked for him.

Question. Okay. Was he in the main office as well?

Answer. Yes.

Question. And what was your kind of day-to-day working relationship with him, if any?

Mr. NELSON. I am not sure I understand what you mean by that. Are you asking her to characterize whether they were friendly? Are you asking her to talk about what she did with him?

EXAMINATION BY MR. ZOELLER:

Question. Just specifically your job responsibilities that would have had interaction with the chairman, yes.

Answer. Well, he had the final say on everything I did. So to the extent I needed sign-off on anything, I would meet with him and ask for his sign-off on whatever it was I was doing, if I was spending money or anything like that.

Question. But as the field director, what were your general responsibilities?

Mr. McLAUGHLIN. I will renew my objection.

The WITNESS. I was responsible for recruiting volunteers, for setting up field offices, for setting up an infrastructure of supporters, for producing literature, for producing phone banks and lit drops. You name it, the general job of a field director is what I did.

EXAMINATION BY MR. ZOELLER:

Question. Okay. In that capacity, did you work with a group known as the Arkansas Travelers? Does that ring a bell at all?

Answer. Yes, that rings a bell, and I don't think I formally worked with them, but I do think they were in New York at one point.

Question. Would you remember who might have been part of the group? I mean which of the travelers from Arkansas were tasked in New York?

Mr. McLAUGHLIN. I am going to note another objection for the record here. This is totally irrelevant. As we have established, the Arkansas Travelers were a group of volunteers from the State of Arkansas going around saying nice things about Bill Clinton. They were not involved in fund-raising. And this investigation, to my knowledge, has not been probing into the political strategy that brought President Clinton's victory in 1992. Accordingly, I will note my objection for the record.

Mr. ZOELLER. Thank you.

The WITNESS. I don't remember any specific people. My just very vague recollection is that it was a group of people from Arkansas who were supporters of then candidate and Governor Clinton, who were available to come speak as surrogates at various events, and I am sure if there were any in town, we probably did schedule them for meetings, but I don't remember anybody in particular.

EXAMINATION BY MR. ZOELLER:

Question. Counsel makes a point that I was not aware of, that there were no people involved in any fund-raising that came out of Arkansas. Is that your understanding of Arkansas Travelers?

Answer. I have no idea.

Question. Okay. But you had never worked with any of them individually?

Answer. Well, I may have, in which case, I don't know that they were Arkansas Travelers.

Question. Okay. Anybody that came from Arkansas that you then later worked with in the White House or DNC that you knew through your work at the White House.

Mr. McLAUGHLIN. Objection.

Mr. NELSON. I am sorry, are you saying, did she know anyone from Arkansas in the White House?

EXAMINATION BY MR. ZOELLER:

Question. No. Let me—

Answer. I am sorry?

Question. Let me restate the question. During the primary, did you meet anybody that came up from Arkansas?

Answer. Yes.

Question. That you later worked with either in the White House, in any of your capacities there?

Answer. The entire campaign from Arkansas moved into New York for 2 weeks, so I met all of them.

Question. And who would you remember, off the top of your head?

Mr. McLAUGHLIN. I am going to once again object. Counsel, I see that you have a pile of documents here from the White House I am sure you are going to want to ask this witness about. Again, the fascinating story of the Clinton victory in 1992 is not the subject matter of this investigation.

If you want to move into matters that are within the scope of this investigation, I suggest you do so promptly and stop wasting everybody's time.

Mr. ZOELLER. Thank you.

Mr. McLAUGHLIN. You are welcome. I will continue my objections.

EXAMINATION BY MR. ZOELLER:

Question. Again—

Answer. It really is—I mean, it is everybody.

Question. John Huang, you worked at—

Answer. I never worked with him in the White House, but anybody who actually did work with me in the White House, you know, from the First Lady's staff to the schedulers to the press staff, most of them worked in—many of them, at least, worked in the campaign in '92, and therefore they all tended to have shown up in New York during the primary, because it was a significant primary.

Question. All right. It was a significant primary, and a lot of them are the same people involved in the '96 campaign. Is that a true statement or not?

Answer. I don't really know. I don't know that I ever saw a roster of the '96 staff. So I don't have a good sense of that.

Question. Okay. Just for the record, though, I have got the idea that everybody you worked with in the White House might have been there. But could you provide me any specifics? I hate to just leave it, everybody at the White House.

Mr. McLAUGHLIN. Counsel, what are you fishing around for? Why don't you ask about specific names or individuals that are maybe within the personal knowledge of this witness? And, furthermore, why don't you move on to the subject matter of the investigation?

Mr. NELSON. She also didn't say everyone in the White House.

Mr. McLAUGHLIN. Counsel, I will just note that this is a most unpromising way to extract relevant, credible information from this witness.

Mr. ZOELLER. I can ask—

Mr. McLAUGHLIN. I am sure that all of her information—I will correct the record—will be credible. This is not a way to extract relevant information from this witness, to ask if there was anybody at the White House who came from Arkansas and worked on the campaign. That seems to be an almost uniquely fruitless line of questioning to pursue.

Mr. ZOELLER. I can ask a lot of specific questions, if you would like.

The WITNESS. That would be helpful.

EXAMINATION BY MR. ZOELLER:

Question. Okay. Did you work with anybody that was directly involved with the Teamsters out of New York?

Mr. NELSON. In the 1992 primary?

Mr. ZOELLER. Yes.

Mr. McLAUGHLIN. Objection. This is flagrantly irrelevant.

The WITNESS. I am sure I did.

EXAMINATION BY MR. ZOELLER:

Question. Anybody specifically?

Answer. I don't remember any names.

Question. Okay. Did you work with—let me see, Arkansas—Webb Hubbell?

Answer. No.

Question. Do you remember anybody else? I hate to sound like I am—

Mr. McLAUGHLIN. Counsel, do you have a list of names that you are interested in, or are you just fishing around here?

Mr. ZOELLER. Well, she remembered that she worked with a lot of people in the White House.

I was just trying to elicit if you remember specific names.

Mr. McLAUGHLIN. She worked at the White House for over 3 years. I think it is inevitable she is not going to remember a lot of people she worked with at the White House. Why don't you move on to a specific line of questioning.

EXAMINATION BY MR. ZOELLER:

Question. Any other names that you remember?

Answer. I mean, it would be helpful if you could or if you went through the offices that you were interested in, or something like that, to sort of help me think about it. Off the top of my head, it is just kind of hard to answer your question.

Question. You stated Harold Ickes.

Mr. NELSON. You were talking in the beginning about people from Arkansas who both worked in the New York primary and worked at the White House.

Mr. ZOELLER. I understand.

Mr. NELSON. I think we all know Harold Ickes was not from Arkansas.

Mr. ZOELLER. Okay. But specifically, we will just stick to Arkansas.

Mr. McLAUGHLIN. Do you have a list of individuals from Arkansas, Counsel? Maybe that would be helpful.

Mr. ZOELLER. She said no to Webb Hubbell.

Mr. McLAUGHLIN. Then move to other individuals from Arkansas.

EXAMINATION BY MR. ZOELLER:

Question. Okay. But you have no specific memory of anybody else from Arkansas? Mr. McLAUGHLIN. She may or she may not. She has told you she wants to have her recollection refreshed. If you could apply some kind of discipline to your questioning, it might be substantially helpful to the witness.

The WITNESS. It would be helpful.

EXAMINATION BY MR. ZOELLER:

Question. Okay. We went through fund-raisers. So there was no one who—none of—Charlie Trie was not part of the restaurateurs from Arkansas that did fund-raising in '92 as well?

Answer. I have no idea what he was in '92.

Question. Okay. John Huang?

Mr. McLAUGHLIN. He was not from Arkansas at the time, Counsel.

EXAMINATION BY MR. ZOELLER:

Question. James Riady was a banker.

Answer. Are you asking if I have met them?

Question. During the '92 primary.

Answer. I did not meet either of them during the '92 primary, or actually even later. I have never met them.

Mr. McLAUGHLIN. Just for clarification, you never met any of those three?

The WITNESS. Any of them. Trie, Riady or Huang, I have never met.

Mr. McLAUGHLIN. Okay. So maybe that will save us some time in the future in this deposition; although I doubt.

EXAMINATION BY MR. ZOELLER:

Question. Ever in any of your—that will help, actually.

Answer. Not as far as I know.

Question. Okay. Mark Middleton?

Answer. I did know him.

Question. Mack McLarty?

Answer. I worked with Mack.

Question. Within the '92 cycle?

Answer. Oh.

Question. I am trying to get some acclimation as to when.

Answer. I believe I met them both in the '92 cycle, but I did not work with them in the '92 campaign. I didn't work with them until the White House.

Question. Okay. And then you were with—let's skip forward to the—

Mr. McLAUGHLIN. I just want to note for the record that we are now half an hour into this deposition and we have not even reached the administration yet.

Proceed.

EXAMINATION BY MR. ZOELLER:

Question. I will skip forward, if I may, just for my own clarity.

Leaving the White House aside, you came back for the '96 convention in New York. And what was your responsibility there?

Answer. That's actually not correct. I actually don't know what you are referring to as the '96 convention in New York. Are you talking about a State party convention or something?

Question. No. I guess it is the—did you work in the—

Mr. McLAUGHLIN. Counsel, maybe you are referring to the 1996 convention in Chicago?

The WITNESS. The '92 convention was in New York.

EXAMINATION BY MR. ZOELLER:

Question. The '92 convention in New York.

Answer. Your question about that?

Question. You had a role in that?

Answer. Yes.

Question. What was your role?

Answer. I was a deputy to Mr. Ickes.

Question. And what were your responsibilities?

Answer. I managed the surrogate speaking program. I helped produce some of the segments of the convention that were televised. I assisted Mr. Ickes in handling the

matters before the standing committees and sort of did whatever he needed to help him manage if he was the manager.

Question. Where would you have fit in the flow chart?

Mr. McLAUGHLIN. Oh, Lord, I am going to object to this as well. Once again, the inner workings of the 1992 convention are not a subject of this investigation. If you want to discuss her relationship with Mr. Ickes and his background to moving into the actually potentially relevant parts of your questioning, why don't you do that.

Probing into the structural organizational chart of the 1992 convention is irrelevant, and I would again ask you to state the pertinence of these questions on the record.

Mr. ZOELLER. You are worried about the time, but you have made this same objection over and over.

Mr. McLAUGHLIN. You persist down this line of questioning, Counsel. Accordingly, I would renew my objection as to every question, so when the committee gets a chance to review this and the taxpayer perhaps some day will see how their taxpayer money is being spent, they will have a full and complete record.

Proceed.

EXAMINATION BY MR. ZOELLER:

Question. Who else did you work with in the—at the convention? I mean, who else worked—Ickes was the head of it and you were the deputy. Who else were deputies?
Answer. I don't actually remember the whole structure. I don't remember how it was set up.

Question. And then I will ask the same general questions of the transition. You went down to Arkansas in the transition. What was your role there?

Answer. I was the political coordinator for the northeast quadrant of the country.

Question. And what were the kind of general day-to-day responsibilities?

Answer. Acting as liaison to the political leadership of the Democratic Party in the campaign in the 13 States that I was covering.

Question. Okay. So this would be the liaison to the party organizations?

Answer. The party organizations and the campaign organizations.

Question. Just in the preparation for the deposition, have you talked to anybody about this deposition before, other than your attorney?

Answer. Not about the substance of it. I think I probably told a variety of different people I was going to be here.

Question. Have you worked with anybody else in preparation for their depositions—

Answer. No.

Question [continuing]. For this?

You have not been asked to make any statements or not make any statements by anybody?

Answer. No.

Question. Did you review documents prior to the deposition?

Mr. NELSON. Other than—I am not going to allow her to answer any questions about what she and I did in meeting to prepare for this.

Mr. ZOELLER. That's fine.

Mr. NELSON. If you want to exclude in meetings with me, I will let her answer whether she reviewed any documents outside of her conferences with me.

Mr. ZOELLER. I will allow that.

EXAMINATION BY MR. ZOELLER:

Question. Anything outside of the client/attorney relationship.

Answer. I didn't review any documents outside of the client/attorney relationship.

Question. Okay. Do you have any documents personally at home or in any other places?

Answer. Documents regarding what?

Mr. McLAUGHLIN. Documents? Does she have any documents at home or at other places?

Mr. ZOELLER. I am sorry. Regarding your White House work.

Mr. McLAUGHLIN. Regarding her White House work?

Mr. ZOELLER. I am sorry?

Mr. McLAUGHLIN. Are you asking if she has any documents from the White House that she keeps at home?

EXAMINATION BY MR. ZOELLER:

Question. Do you understand the question?

Answer. Well, I don't think so.

Question. Okay.

Answer. I think I left pretty much everything there. I probably have some personnel records. I don't know. But they make you leave most things there.

Mr. NELSON. I think the record is going to be unclear. I hate to say it. Your response, "I don't think so," came in response to the question, "Do you understand the question?"

The WITNESS. Oh.

Mr. NELSON. So maybe we should clarify that.

Mr. ZOELLER. You are right. Just for the record, I did ask whether you understood the question.

The WITNESS. I didn't actually understand the question.

Mr. McLAUGHLIN. Maybe you could—

EXAMINATION BY MR. ZOELLER:

Question. Okay. I was asking whether you had taken any White House documents home with you and had those in your possession.

Mr. NELSON. I have got to say I hadn't understood that to be the question, but I think I do understand that question. So why don't you answer that one.

The WITNESS. Did I take any White House documents home?

EXAMINATION BY MR. ZOELLER:

Question. Yes.

Answer. There are probably some miscellaneous documents I took home related to personnel matters related to me, things like that, but I don't think I took home anything related to anything substantive about my White House work.

Question. Okay. You are familiar with the Presidential Records Act?

Answer. Yes.

Question. And all the requirements?

Answer. That's why I didn't take things home.

Question. How did you come to work at the White House? I did read your various jobs, but it was not clear as to how you—

Mr. McLAUGHLIN. That question was asked and answered, Counsel.

EXAMINATION BY MR. ZOELLER:

Question. How did you come to work in the White House?

Answer. David Watkins offered me a job.

Question. Okay. Did you interview with anybody other than David Watkins?

Mr. McLAUGHLIN. That question was asked and answered. Would you like me to read the question in response from the prior deposition?

Actually, I am going to do that as to each question where you ask a question that was already asked and answered.

By Ms. Comstock in a prior deposition on—let me make sure I have the date—March 29th, 1996.

Mr. ZOELLER. Excuse me. Is this meant to speed this deposition along?

Mr. McLAUGHLIN. No, Counsel. It is meant to make a clear record. It is you who are choosing to drag this deposition down this path by asking questions that were already asked and answered under oath in a deposition before this committee last year. And I will note that there are a series of questions about the 1992 campaign.

Mr. ZOELLER. This is fascinating, and I appreciate your help in it.

Mr. McLAUGHLIN. It is not assistance, Counsel. Counsel, it is not—

Mr. ZOELLER. It might be a lot simpler if she would answer the question.

Mr. McLAUGHLIN. I object to your tactics in this deposition, asking questions that were previously asked and answered.

Mr. ZOELLER. You have made that clear. Counsel, do you have any objection to me asking this question?

Mr. NELSON. I have an objection, because I do think the question was asked and answered, but I am not going to instruct the witness not to answer it.

EXAMINATION BY MR. ZOELLER:

Question. Do you recall?

Answer. I can't remember the question at this point.

Question. Would you read the question, back, please.

[The reporter read back as requested.]

Mr. McLAUGHLIN. I am going to note my objection to the question.

This is a question by Mrs. Comstock: "Do you recall who interviewed you for your first position at the White House?"

"ANSWER: I don't think I was interviewed for my first position at the White House.

"QUESTION: Do you know how you were hired?

"ANSWER: I had been working on the transition with Mr. Ickes on the structure of the White House staff, and because of that, I had knowledge of the structure of the White House staff, and when Mr. Watkins began his position, he found that valuable and knew that I had that knowledge and hired me on the basis of his knowledge—my knowledge."

Counsel, it is outrageous that you are asking an identical question that was asked in this deposition last year.

Having made that objection, you may now proceed.

EXAMINATION BY MR. ZOELLER:

Question. Did you interview with anybody other than David Watkins?

Answer. I don't remember interviewing with anybody other than David Watkins.

Question. Okay. Thank you. It is an interesting point, though, about your involvement in the structure of the White House.

Were you involved at all in the hiring of anyone else? Was that part of your role?

Mr. McLAUGHLIN. Objection.

Mr. NELSON. Do you remember when she worked for David Watkins?

Mr. ZOELLER. Yes.

Mr. NELSON. Was she involved in hiring personnel?

Mr. ZOELLER. Yes.

The WITNESS. In hiring, do you mean in selecting people?

EXAMINATION BY MR. ZOELLER:

Question. Just providing materials for Mr. Watkins. You had been with the transition, so I was wondering whether that was part of your role with Watkins.

Mr. McLAUGHLIN. I am going to object on the grounds that her work for David Watkins has been probed with a fine-tooth comb by this committee in the last Congress. Accordingly, this line of question again seems to be a remarkably unfruitful way to get at the subject matter of this investigation, which is fund-raising activities in the 1996 campaign.

Mr. ZOELLER. Thank you.

Mr. McLAUGHLIN. You are welcome, Counsel. It is an objection. You don't have to thank me.

EXAMINATION BY MR. ZOELLER:

Question. Do you remember? I am sorry.

Answer. I might have, but I don't remember.

Question. Okay. Can you just briefly give me your role with Cabinet affairs, which Cabinet levels you reported in with?

Mr. McLAUGHLIN. Objection. Asked and answered.

The WITNESS. Are you asking which agencies I dealt with?

EXAMINATION BY MR. ZOELLER:

Question. Yes.

Answer. Justice, HHS, HUD, Veterans' Affairs, and the Office of National Drug Control Policy.

Mr. McLAUGHLIN. Let me just note in my objection here, question—this is from Barbara Comstock last Congress:

"QUESTION: What did you do in that position?

"ANSWER: I was liaison to the Department of Justice, HHS, HUD, Veterans' Affairs, and the Office of National Drug Control Policy."

Asked and answered. Counsel, move on to something relevant and not repetitive.

Mr. ZOELLER. Thank you.

Mr. McLAUGHLIN. Again, you are welcome. You don't have to thank me, Counsel. It is an objection for the record.

EXAMINATION BY MR. ZOELLER:

Question. Okay. You had said your office was in room 178 when you worked with Mr. Ickes at the White House. Is that right? I am sorry. I know it is asked and answered, but maybe, Counsel?

Answer. I think it might have been in 178 when I worked with Mr. Watkins.

Mr. McLAUGHLIN. Counsel, you are mischaracterizing this earlier deposition testimony. I am now looking at page 6 of the Internet printout of this deposition, and

your testimony as to room 178 of the OEOB is clearly in response to a question concerning when she was working for Mr. Watkins, the assistant to the President for management in the administration. Please do not mischaracterize Ms. O'Connor's earlier testimony.

EXAMINATION BY MR. ZOELLER:

Question. I am sorry. Where did you work? What office did you work in? You worked with Mr. Ickes as the deputy?

Answer. I think—

Mr. McLAUGHLIN. Did you testify that you were his deputy?

Mr. ZOELLER. When he was the deputy chief of staff.

Mr. McLAUGHLIN. I apologize.

The WITNESS. I was not his deputy. I was an aide to him. I was in room 111 for a while, and then—and then—gosh, I can't remember the room number. I could find it again, but I don't remember the number.

EXAMINATION BY MR. ZOELLER:

Question. This is really where I could refresh. In your earlier deposition, I think you said you were in 178 with Mr. Watkins. Is that correct?

Answer. Right.

Mr. McLAUGHLIN. That's the second time you have asked that question, and this is the second deposition in which she has been asked that question.

EXAMINATION BY MR. ZOELLER:

Question. Okay. Sorry if this is disjointed at all, but let's focus for just a second on your role with Mr. Ickes. What year did you start that, the date, if you can remember?

Mr. McLAUGHLIN. I just want to note that it is now 10:45 and we are now reaching the first question regarding the witness' work with Mr. Ickes.

The WITNESS. I don't specifically remember when I started.

Mr. ZOELLER. Okay.

Mr. NELSON. I think the general time frame is probably in her prior deposition also.

Mr. McLAUGHLIN. I believe the testimony is March 1995—February 1995. Does that sound right?

The WITNESS. That sounds about right.

EXAMINATION BY MR. ZOELLER:

Question. Do you remember your telephone number, by any chance? That's a long time ago.

Mr. McLAUGHLIN. Objection. Relevance.

The WITNESS. I don't remember the phone number.

EXAMINATION BY MR. ZOELLER:

Question. Do you know if you had any DNC phones available to you at that time?

Answer. No DNC phones.

Mr. NELSON. You are talking about as of February 1995?

EXAMINATION BY MR. ZOELLER:

Question. Right. When you—and all of these questions will be in your work with Mr. Ickes as his assistant.

Mr. McLAUGHLIN. In February 1995 or throughout?

Mr. ZOELLER. Throughout.

Mr. NELSON. Well, that was the point of my request for clarification.

Mr. ZOELLER. Okay.

Mr. NELSON. Because I thought the question was, did she have that when she started there?

EXAMINATION BY MR. ZOELLER:

Question. No. Let me make sure that is clear. I am talking about throughout your—

Answer. You are asking if I ever had a phone paid for by the DNC?

Question. Yes.

Answer. No.

Question. Any other equipment, fax, or any other equipment in the White House that was DNC?

Mr. McLAUGHLIN. Are you asking about any other equipment anywhere in the White House or in her office?

EXAMINATION BY MR. ZOELLER:

Question. That you had access to?

Answer. I don't know of any equipment in the White House paid for by the DNC.

Question. Did you answer the phones for anyone other than yourself in this—during this time period?

Answer. Not on a regular basis.

Question. Did you answer your own phones?

Answer. Sometimes.

Question. Okay. Were there other people who reported to you that answered your phones?

Answer. Interns answered my phones.

Question. Okay. Would they answer the phones for anyone other than you?

Answer. Yes.

Question. And who would they have answered the phones for?

Answer. Interns answered Mr. Ickes' phone.

Question. Anyone else?

Answer. Well, I think interns answered a lot of different people's phones.

Question. Okay. But in your office?

Mr. NELSON. You are talking about the same specific interns who answered her phones?

Mr. ZOELLER. That's right.

Mr. NELSON. Would that specific intern answer someone else's phones?

The WITNESS. Not that I know of.

EXAMINATION BY MR. ZOELLER:

Question. For the most part, the phone calls that came into your office were either for you or Mr. Ickes or—

Answer. Yes.

Question. Or were there other people that—

Answer. No. That's correct.

Question. Okay. Did you type your own letters and memos?

Answer. Often.

Question. And did you type other people's?

Answer. Well, I drafted letters for anybody from the President to Mr. Ickes, you know, as an occasional—it wasn't a major part of my job, but I certainly did that sometimes.

Question. Okay. So when you would type other people's memos, was this always done in—did you usually do this in a hard copy, or were there other systems that you would send materials?

Answer. Just to clarify, I wasn't typing somebody else's. I mean, I drafted things.

Question. Right.

Answer. So as a draft, I would be writing.

Mr. McLAUGHLIN. From scratch?

The WITNESS. From scratch, and creating on a computer.

EXAMINATION BY MR. ZOELLER:

Question. Okay. Was this an internal—could you send it to someone else's computer, or was it usually in a hard copy?

Answer. It was in a computer.

Mr. McLAUGHLIN. I am not sure—I think we just had a disconnect there. Are you asking if there was a common drive that documents could be placed on so they could be accessed by other individuals without printing them into paper form? Is that the intent of your question?

Mr. ZOELLER. I am asking how the communications worked when you would provide a draft for someone.

Mr. NELSON. And the question specifically was, did you send it via the computer or did you print it out in hard copy?

Mr. ZOELLER. That's correct.

The WITNESS. I sometimes did either one of those two things.

EXAMINATION BY MR. ZOELLER:

Question. Okay. Did you regularly use e-mail? Was that part of the communications?

Answer. Yes.

Question. Just did you produce many documents over your own name?

Answer. Yes.

Question. And who would you have regularly communicated with, if you can recall? What office?

Mr. McLAUGHLIN. Communicated with about what?

EXAMINATION BY MR. ZOELLER:

Question. In memorandum form.

Answer. It could have been anybody. I mean, we are talking hundreds. I mean, a very wide scope; anybody from the President on down.

Question. I am not trying to be, you know, unclear. The reason is that I only have a very few documents that have your name on it as the sending party.

Answer. Uh-huh.

Question. So in terms of White House production, you know, Counsel—

Answer. That's because I didn't write anything that your committee is interested in, I don't think.

Mr. McLAUGHLIN. Counsel, if you are suggesting that somehow documents are being hidden, I think that maybe you should withdraw that suggestion.

EXAMINATION BY MR. ZOELLER:

Question. I am not suggesting—I am just stating as a fact that the White House has not produced many documents that have your name on it.

Answer. It's not because I didn't write many documents that have my name on them.

Question. That's what I was trying to elicit.

Answer. I don't think they had anything to do with what you are looking at.

Question. Okay.

Mr. McLAUGHLIN. Or supposed to be looking at.

Mr. NELSON. And I would also just add as a clarification, I think all document production related to this investigation probably came at a time when Ms. O'Connor was no longer working at the White House and she had no role in the production of any documents relating to your investigation.

Mr. McLAUGHLIN. Counsel, I want to just note that I find it strange that though you replicated every question from the prior deposition, you did not ask questions as to what has happened since March of 1996. You have not asked the witness when she left the White House and maybe what she is doing now. I don't want to intrude on your line of questioning, but you might actually want to update the record rather than simply repeat it.

Mr. NELSON. I was sort of hoping we could skip that, too.

EXAMINATION BY MR. ZOELLER:

Question. Well, in terms of the file systems, did you have any management over the file systems for the deputy chief of staff—

Answer. No.

Question [continuing]. Mr. Ickes?

Are you familiar with where those files would have been kept or who would have maintained them?

Answer. No.

Question. Do you have any knowledge of how the deputy chief of staff's office was organized generally?

Answer. Yes.

Question. But you—would there have been someone specific that would have been in charge of the files in that organization, or was it done outside of the office?

Answer. I don't know anything about the files.

Question. In terms of your interaction, maybe if we could speed this up somewhat by explaining your interaction with the other offices, if any, within the White House, as the assistant to the deputy chief of staff.

Answer. Could you be more specific?

Question. Well, did you have any interaction with Mack McLarty, the chief of staff?

Answer. Yes.

Question. And what would have been your role in that relationship? What would you have been producing for him?

Mr. McLAUGHLIN. Your question assumes something. Why don't you just let her testify, Counsel.

The WITNESS. I don't know that I ever produced anything for him. However, if he was working on an issue and Mr. Ickes was also working on it, you know, it wouldn't have been atypical for Mr. Ickes to have me work with Mr. McLarty on it.

EXAMINATION BY MR. ZOELLER:

Question. You would have worked at the instruction of——

Mr. McLAUGHLIN. The instruction of?

The WITNESS. Of Mr. Ickes.

EXAMINATION BY MR. ZOELLER:

Question. Of Mr. Ickes?

Answer. Correct.

Question. Okay. How about in working with John Emerson?

Answer. How about what? Working with him?

Question. Would you have worked directly with him or only through Mr. Ickes?

Answer. Well, I worked directly with many people, but it was all on behalf of Mr. Ickes.

Question. Okay. How about with Marsha Scott?

Answer. Same.

Question. Would you have——would you have worked with her directly or always through——

Mr. McLAUGHLIN. Asked and answered. She says—I mean, now I think we are being very unclear. I believe that the witness understood you to be asking if she worked directly with the individuals that you have been listing. And so when she answered yes, I think that that was asked and answered. Now you are saying, did you work directly or through Mr. Ickes? I think you need to be clear as to what you are asking about each individual that you are listing.

The WITNESS. Are you asking if I ever worked with those people?

EXAMINATION BY MR. ZOELLER:

Question. Uh-huh.

Answer. I did work with Mr. Emerson. I did work with Ms. Scott.

Question. Specifically, with Marsha Scott, what was your——what role would you have played or what specific work would you have done with her?

Answer. In what period of time?

Question. Particularly in the middle of '96.

Answer. I don't recall doing anything with her in the middle of '96.

Question. How about with Mark Middleton? Would that have——

Mr. NELSON. In mid-1996?

Mr. McLAUGHLIN. He left the White House in February '95, so it seems again like a remarkably fruitless line of questioning.

The WITNESS. I definitely never worked with him after he left the White House.

EXAMINATION BY MR. ZOELLER:

Question. Okay. That's helpful. How about William Kennedy?

Mr. McLAUGHLIN. Objection.

The WITNESS. I didn't work with him after he left the White House either.

Mr. McLAUGHLIN. As to relevancy.

Mr. NELSON. And if you don't mind, there are times when a question in the form of "how about such and such" may, in context, mean something to a witness, but I am lost now about whether, when you are going through these, you are meaning to ask what did she do with them in mid-1996 or whether it is something more general.

Mr. ZOELLER. No; that's specifically what I am—and I know they have left the White House.

Mr. McLAUGHLIN. Counsel, now you are shifting to the mid-1996 time frame, mid list, just so the record is clear.

EXAMINATION BY MR. ZOELLER:

Question. What I am—in your role with Mr. Ickes' office and particularly in, let's say, mid-1996——

Mr. McLAUGHLIN. That, again, is a different thing than you were asking for.

EXAMINATION BY MR. ZOELLER:

Question. When Mark Middleton left, you had no further—you didn't work with him at all after that, when he was not in the White House?

Answer. I didn't work with Mark Middleton after he left the White House.

Question. Okay. That helps me in a whole line of questions that I know it sounds—but I can avoid three or four pages now.

The same with Mr. Kennedy after he left the White House?

Answer. Didn't work with him after he left the White House.

Question. Okay. In your relationship with the counsel's office, who would you have worked with primarily on legal counsel?

Answer. Probably every one of them.

Question. How about your—did you work at all with the people in Oval Office operations? Did you work with Nancy Herrnreich?

Answer. What do you mean by "work with"?

Question. Would Mr. Ickes have assigned you to work with them on a project that he was dealing with?

Mr. McLAUGHLIN. Is that a retroactive definition of "worked with" to apply to all the previous names on this list, Counsel, or is that a new definition to apply from this point forward?

Mr. ZOELLER. Do you want me to clarify that question?

Mr. McLAUGHLIN. Counsel, I just asked you a question for my own understanding so the record is clear.

Mr. ZOELLER. Just for this one, I am on Oval Office operations.

Mr. ZOELLER. This definition only applies to this?

Mr. ZOELLER. That's right.

The WITNESS. I don't think I ever worked with a project, per se, with Nancy Herrnreich.

EXAMINATION BY MR. ZOELLER:

Question. Okay. And what would have been your—Doug Sosnik worked as director of political affairs. Would you have worked with him on projects for Mr. Ickes?

Mr. McLAUGHLIN. Would you have—Counsel, do you mean, would she have? Or why don't you ask, did she work?

EXAMINATION BY MR. ZOELLER:

Question. Did you?

Answer. Now I need you to define "project."

Question. Were you assigned by Mr. Ickes to work on specific matters, political matters, with Political Affairs Office?

Answer. I guess, yeah.

Question. Okay. Did you ever attend any regularly scheduled meetings? Did they have a senior staff meeting in Mr. Ickes' office or any other meetings that you would have attended regularly?

Mr. McLAUGHLIN. That's too—there is a series of questions buried in there, Counsel. Why don't you discipline your questioning a little bit and bring them out one by one.

EXAMINATION BY MR. ZOELLER:

Question. Did you ever attend regularly scheduled meetings?

Answer. In the White House in general?

Question. Yes.

Answer. Yes.

Question. Which meetings would you have been—

Mr. McLAUGHLIN. Would you have?

EXAMINATION BY MR. ZOELLER:

Question. Which did you attend?

Answer. There was a daily senior staff meeting, that Mr. Panetta held, that I attended regularly.

Question. Any other meetings, senior staff?

Mr. NELSON. Pardon me.

EXAMINATION BY MR. ZOELLER:

Question. Besides senior staff?

Mr. NELSON. Were there any other regularly scheduled meetings that she attended besides the Panetta senior staff meeting?

The WITNESS. That would have been the only one that was sort of an every day for 2 years kind of thing, you know. As particular issues arose, there might have been regular meetings for a couple of weeks about issue X or Y, but the daily senior staff meeting was the only regular meeting that spanned my whole time working for Mr. Ickes.

EXAMINATION BY MR. ZOELLER:

Question. Okay. That's—thank you.

So there were no regularly scheduled meetings for Mr. Ickes' office staff?

Mr. McLAUGHLIN. Asked and answered.

The WITNESS. No.

EXAMINATION BY MR. ZOELLER:

Question. Were there periodic meetings, anything that wouldn't be required as regular but—

Answer. I don't recall him ever pulling his whole staff together for a meeting.

Question. Thank you.

Did you ever attend any meetings on his behalf that you were not a regular—

Answer. Hundreds.

Question. Hundreds. Did you ever attend the DNC budget meetings?

Answer. I don't know what that refers to.

Question. Any meetings in the White House with DNC hierarchy regarding the DNC budget.

Mr. McLAUGHLIN. DNC hierarchy?

Mr. ZOELLER. I am sorry. Senior staff at the DNC that would come over and talk about the budget.

The WITNESS. I don't—well, the way you are characterizing it, I don't think so.

EXAMINATION BY MR. ZOELLER:

Question. Did you ever attend any meetings where DNC leadership provided information about the budget?

Mr. McLAUGHLIN. Do you mean officials of the DNC, employees of the DNC maybe?

Mr. ZOELLER. Yes, both.

Mr. McLAUGHLIN. There are public officials who are leaders of the DNC who don't draw a paycheck.

The WITNESS. I think I might have.

EXAMINATION BY MR. ZOELLER:

Question. In the—in these meetings with the DNC, were you ever involved in conversations regarding fund-raising?

Mr. McLAUGHLIN. Counsel, I think your question assumes a fact that she has not testified to which is, you characterized them as meetings with the DNC. I don't think that that is what her testimony about those meetings accurately reflects.

The WITNESS. Can you ask the question again?

EXAMINATION BY MR. ZOELLER:

Question. Did you ever attend meetings with people who were on the DNC payroll where they discussed fund-raising?

Answer. I might have. I don't recall any specifically.

Question. Would you have ever seen any of the spreadsheets that were produced on DNC finance?

Mr. NELSON. I would object.

Mr. McLAUGHLIN. Spreadsheets?

Mr. NELSON. Again, I think in these types of questions it really is helpful to ask her if she did or did not, as opposed to, would she have.

Mr. McLAUGHLIN. Similarly, Counsel, why do we play hide the ball here? Why don't you produce a document and ask her if she has seen it? We have such spreadsheets. I don't know if you are trying to trap the witness or something. Why don't you produce the documents and do this in a more disciplined fashion instead of these free floating questions?

Mr. ZOELLER. I appreciate your help, but if she doesn't know anything about these spreadsheets, there is no reason to produce it.

EXAMINATION BY MR. ZOELLER:

Question. It is very specific. DNC spreadsheets on finance, if you have never seen it, I will save us the trouble.

Answer. I have seen spreadsheets. I don't know if I have seen the ones you are referring to.

Question. Then I will go through some of that.

Mr. McLAUGHLIN. Counsel, could I have a copy of that before you show it to the witness?

Mr. ZOELLER. For the record—

Mr. McLAUGHLIN. Counsel, just—

Mr. ZOELLER. I am showing counsel—

Mr. McLAUGHLIN. Counsel, can I just ask that you show me a copy of the document on the questioning side before you show it to the witness?

Mr. ZOELLER. Yes.

Mr. McLAUGHLIN. Thank you.

Mr. ZOELLER. I am showing counsel and the witness what is labeled as, I guess it is CGRO 0660.

EXAMINATION BY MR. ZOELLER:

Question. Have you ever seen this document?

Answer. I don't remember.

Mr. McLAUGHLIN. I will note that the witness' name does not appear on the memorandum.

EXAMINATION BY MR. ZOELLER:

Question. Are you familiar with the subject matter?

Mr. McLAUGHLIN. Do you want to define the subject matter, Counsel?

Mr. ZOELLER. Well, it says regarding the DNC budget fund-raising meetings.

Mr. McLAUGHLIN. Do you mean the meeting? Do you mean the subject matter of subject fund-raising? Do you mean text that is contained within the document? Be clear in your questioning, Counsel.

EXAMINATION BY MR. ZOELLER:

Question. Have you read the document?

Answer. Yes.

Question. Are you familiar—would you have been familiar or are you familiar with that subject matter as it relates to—

Answer. Am I familiar with those meetings?

Mr. McLAUGHLIN. With that particular meeting.

Mr. ZOELLER. Yes.

The WITNESS. No.

EXAMINATION BY MR. ZOELLER:

Question. Okay. Would you have ever attended one of these meetings for Mr. Ickes?

Answer. I don't really know what the "one of these meetings" refers to.

Question. Again, it is this DNC budget meeting.

Mr. NELSON. The subject matter of this memo is a specific meeting. I mean, what I don't know—maybe you know—is whether this was part of a series of meetings, when you say "one of these meetings." I think maybe the question should be, did she ever attend a, quote, DNC budget fund-raising meeting, end quote, on Mr. Ickes' behalf. I mean, that seems to me to be a proper question.

Mr. ZOELLER. Well, I—in response to your—I may have, I think I did ask something like that, that you—so I will pose that question.

EXAMINATION BY MR. ZOELLER:

Question. Have you ever—did you ever attend a meeting on his behalf regarding the DNC budget?

Answer. I do not recall ever attending one of what I think you are characterizing as a regular meeting called something like the DNC budget fund-raising meeting, one of which this document seems to be referring to. If that was a regular meeting, I don't recall ever attending it.

Question. Would you have ever produced any materials from Mr. Ickes' when he would attend, I won't call it a regular meeting, but one of the meetings regarding the DNC budget?

Mr. McLAUGHLIN. That's presuming that she would know. I mean, Counsel, why don't you ask her if she knows whether Mr. Ickes attended, and then you could ask questions as to whether she produced materials in response to that.

If she doesn't know if Mr. Ickes's attended, then you might want to ask about memos specifically about the subject matter that may or may not have been used by Mr. Ickes. That, it seems to me, would be a proper question to pose to Mr. Ickes.

EXAMINATION BY MR. ZOELLER:

Question. Where are we?

Answer. I don't know.

Mr. McLAUGHLIN. Is there a question on the table, Counsel?

Mr. ZOELLER. There was until you asked several.

EXAMINATION BY MR. ZOELLER:

Question. But if you could just direct your attention to my questions, please.

Answer. All right. What is your question?

Question. Let me rephrase it rather than have the reporter read one back.

Would you have ever—did you ever produce materials for Mr. Ickes that he would have used or he did use at a DNC budget meeting?

Answer. I don't know that he ever used anything I ever produced at a DNC budget meeting.

Question. Okay. That skips a lot of things. Thank you.

This specific—before we go past this, this specific document refers to Federal dollars and major donors. Are you at all familiar with the subject matter of Federal dollars versus non-Federal dollars?

Mr. McLAUGHLIN. Are you at all familiar with that subject matter? You mean just out in the ether, have you ever heard the legal distinction? Is that your question, Counsel?

Mr. ZOELLER. Yes.

The WITNESS. I have a general understanding of the legal distinction between the Federal and non-Federal dollars.

EXAMINATION BY MR. ZOELLER:

Question. Okay. But in your capacity with Mr. Ickes, would you have been involved in any of the discussions of the legal significance between the two?

Mr. McLAUGHLIN. In any discussions of the legal difference?

The WITNESS. Did I have a legal discussion with him about the difference between the two?

EXAMINATION BY MR. ZOELLER:

Question. Yes.

Answer. I don't think so. I don't recall ever having that kind of conversation.

Question. Okay.

Mr. McLAUGHLIN. Is this going to be marked, Counsel?

Mr. ZOELLER. No, no. I don't think—

Mr. McLAUGHLIN. You are not going to include these in the record for purposes of identification?

Mr. ZOELLER. Maybe we should.

Mr. McLAUGHLIN. It would be my preference that everything the witness is shown be included in the record.

Mr. ZOELLER. We will mark this Exhibit 1.

Mr. McLAUGHLIN. JOC 1 or JO?

Mr. NELSON. Is this the one that you want to mark since this is the one that was shown to the witness?

Mr. ZOELLER. Yes.

Mr. NELSON. Does anyone happen to have any actual exhibit stickers?

Mr. ZOELLER. They are on the way.

[O'Connor Deposition Exhibit No. JO-1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

EXAMINATION BY MR. ZOELLER:

Question. Just so maybe I can shorten some other series of questions before we skip the whole discussion of the budget, would you have worked or did you work with Mr. Ickes on any other aspects of the Clinton-Gore budget, the campaign budget?

Mr. McLAUGHLIN. Any other aspects?

The WITNESS. What do you mean by "work with him," and what do you mean by "other aspects"?

EXAMINATION BY MR. ZOELLER:

Question. Did Mr. Ickes ever ask you to prepare materials or specific research or documents at his request regarding the Clinton-Gore budget?

Answer. Yes.

Question. What types of materials would you have produced?

Mr. McLAUGHLIN. Would you have?

EXAMINATION BY MR. ZOELLER:

Question. Did you produce?

Answer. Actually, I don't know that I actually produced anything.

Question. Well, this would have been something that you would have communicated with him other than through a written production.

Answer. I might have edited stuff or, you know, discussed documents with him. I think they were generally produced by other people, though.

Question. Are you familiar with the White House coffee series? Did you have some role in the White House coffees?

Mr. McLAUGHLIN. Counsel, do you mean political coffees?

Mr. ZOELLER. Yes.

Mr. McLAUGHLIN. Do you mean any coffee consumed anywhere on White House premises?

EXAMINATION BY MR. ZOELLER:

Question. Are you familiar with the term "the White House coffees"?

Mr. McLAUGHLIN. Again, Counsel, do you mean political coffees?

EXAMINATION BY MR. ZOELLER:

Question. Does that mean something to you?

Answer. Well, I am taking what you are saying, what has been referred to in the press as a series of breakfast coffees that the President had with supporters.

Question. That's right.

Answer. You are asking if I am familiar with that?

Question. Yes.

Answer. Yes.

Question. Would you have had some role to play in that?

Answer. No, not that I—I mean, I didn't set them up, if that's what you are asking.

Question. Would you have referred names or—

Mr. McLAUGHLIN. "Would you," Counsel?

EXAMINATION BY MR. ZOELLER:

Question. Did you refer names or do anything else?

Answer. Sure, I referred names.

Question. What types of names? Did you have a subject matter?

Answer. I referred names of people that I thought ought to see the President.

Question. Was there a specific subject matter or was—were they delineated by affiliation with an industry or anything else that would separate your—the people that you would recommend?

Answer. I was the liaison to the labor movement, and often I think probably most of the people potentially, not every one of them, but most of them were probably from the labor community.

Mr. ZOELLER. I am showing the witness what has a Bates mark of EOP 02429, which we will—

Mr. McLAUGHLIN. I think it is 024249.

Mr. ZOELLER. Thank you—we will mark as JO-2, and ask whether you are familiar with this document.

[O'Connor Deposition Exhibit No. JO-2 was marked for identification.]

Mr. NELSON. Has she seen this document before? Is that the question?

Mr. ZOELLER. Yes.

The WITNESS. No, I don't recall ever seeing it.

EXAMINATION BY MR. ZOELLER:

Question. When you—you testified that you had referred some labor names. How would you refer those names? Who would you refer them to?

Answer. Whoever was setting up the coffee.

Question. Would they differ from coffee to coffee?

Answer. I don't really remember.

Question. Do you remember whether you would have given it to someone at the White House versus the DNC, which of those two you might have referred names?

Mr. NELSON. Which of those two she did refer names?

Mr. ZOELLER. Yes.

The WITNESS. I don't remember. I think it could have been both on different occasions.

EXAMINATION BY MR. ZOELLER:

Question. Did you have a—knowledge as to the purpose of the coffees?

Answer. I had an understanding of the purpose of the coffees.

Question. And what was your understanding?

Answer. To give the people who were invited an opportunity to talk with the President.

Question. Would you ever contact any of the labor representatives personally to invite them, or would someone else invite them?

Answer. I think it is possible I invited them personally on occasion. It is also possible that other people did. I don't remember.

Question. Do you recall ever inviting someone specifically?

Answer. Not specifically, but I am sure I probably did. And when I say "me," just for clarification, it is possible I didn't make the phone call; I might have had an intern call the person's secretary to invite them or something like that.

Question. Just for clarification, when you say that you were the liaison with Mr. Ickes to the labor officials, were there specific duties in that capacity, or was it just from time to time an ad hoc assignment?

Answer. It was a regular assignment.

Question. And what were your general responsibilities?

Answer. To be their liaison.

Question. Specifically with Mr. Ickes?

Answer. With the White House.

Question. Okay. Generally, not just Mr. Ickes?

Answer. Correct.

Question. Okay. Who else would you communicate to on—in the White House, other than Mr. Ickes?

Answer. Anybody who it was relevant to talk to.

Question. Maybe I should show you the one that I am going to mark as JO-2.

Answer. It looks the same to me.

Mr. NELSON. They are pretty much the same. I think it has got the complete Bates number, just barely.

The WITNESS. Looks good.

EXAMINATION BY MR. ZOELLER:

Question. Were you ever aware—do you have any personal knowledge of people being offered places at one of these coffees for a specific contribution?

Answer. No.

Question. Do you know whether there were ever any contributions that came to your office?

Answer. Certainly none that I was ever aware of.

Question. Okay. Did you work with anyone at the DNC regarding the major donor program?

Answer. Not as far as I am aware.

Question. As it relates to labor organizations, would you have had any role in contributions that were either part of a major donor or any other program?

Answer. Well, I don't know what the major donor program was, so if somebody there was working with me as part of it, I don't know it.

Question. Okay. Would you have had any—or did you have any role with labor officials about labor contributions—

Answer. No.

Question [continuing]. To the DNC?

Answer. I didn't discuss contributions with them, and I didn't manage the fund-raising from labor officials.

Question. All right. Thank you.

Did you work with Mr. Fowler regarding labor officials' requests of the DNC?

Mr. NELSON. Any requests by labor officials to the DNC for anything?

EXAMINATION BY MR. ZOELLER:

Question. Well, to clarify what I am looking for is, I know you played a role in the relationship with labor representatives in the White House. Did you play any role in the relationship between the DNC and these same labor officials?

Answer. I was not the DNC liaison to the labor movement, if that's what you are asking, no.

Question. Okay. Did you work with Mr. Ickes in a capacity where he would have provided a role as a liaison between labor officials and the DNC?

Answer. I don't believe anybody in the White House stood between the DNC and the labor movement.

Question. Okay. I am showing you a document that has a Bates stamp of EOP 036161. Have you ever seen this document before?

Answer. It looks vaguely familiar.

Question. Did you ever speak with Marsha Scott regarding the coffees?

Answer. Yes.

Question. Would it have been in any capacity other than the labor representatives that you referred as potential guests?

Mr. NELSON. Well, how about, was it?

EXAMINATION BY MR. ZOELLER:

Question. Yes. Was it, other than just what you have already testified to?

Answer. The discussions that I had with her regarding the coffees involved her telling me if an issue came up at a coffee that was relevant to my work, because she attended a number of them.

Question. Would she have reported back orally, or did she produce a written report?

Answer. She reported orally.

Question. Okay. So by that, she would sit down with you and say what had been brought up at the coffees regarding your issues?

Answer. On a number of occasions, she called me and said at coffee this morning X said Y and the President said Z, something like that.

Question. Okay. So her role, as you understood it, was to follow up on these? Or how did the process work, to your understanding?

Answer. I don't really know what her role was. I just know that on at least occasion—I think it was more than one—she told me that she was at a coffee and wanted to relay to me a bit of conversation that she thought was relevant to my work.

Question. Were you expected to follow up? Or what was your role in the other end of that conversation? Did you report back to her with something?

Answer. No, I didn't report to her. I would just do whatever seemed appropriate given the information. If she was saying somebody was concerned about an issue, if it sounded like it was something I ought to be concerned about, then I would look at it, okay, you know. If not, I wouldn't.

Question. Do you recall specifically?

Answer. I don't remember anything specifically, no.

Question. Would it have been on a particular issue? I mean, did you—I think you had said you covered the labor agenda, but—or the labor officials. But was—

Answer. No. I covered a lot of different issues and so it could have been anything.

Question. What other issues did you cover, just to kind of clarify?

Answer. It was a very, very wide scope. I mean, you know, on any different occasion Mr. Ickes could assign me—I was mostly a policy aide, so there were a lot of different policy issues that I would be working on at any given point in time, and they changed many times over during the period in which I worked for him.

Mr. ZOELLER. Let's go ahead and mark this Exhibit JO-3. I will submit it for the record.

[O'Connor Deposition Exhibit No. JO-3 was marked for identification.]

EXAMINATION BY MR. ZOELLER:

Question. I am sorry. There is one that's got away. This is marked CGRO 10924, that I am showing the witness.

Are you familiar with this memorandum to Chairman Dodd?

Mr. McLAUGHLIN. You mean, have you seen it?
The WITNESS. Do you mean, have I seen it?

EXAMINATION BY MR. ZOELLER:

Question. Yes.

Answer. Probably. But I don't specifically remember seeing it, but it was cc'd to me. That means there is a good chance I saw it.

Question. Do you have any recollection of the subject matter regarding the bills for Squier/Knapp and Penn and Schoen?

Answer. Sure.

Question. What would have been your role? What was your role in this subject matter?

Answer. I was part of the process of reviewing their bills and authorizing their payment.

Question. Could you describe the process generally?

Answer. Well, I might leave some things out just because it is a while ago.

Mr. McLAUGHLIN. Before we go on actually, I just want to put an objection on the record. Bills for the media consultants bear no relationship whatsoever to fund-raising. This is on the expenditure side of the aisle for the President's reelection campaign and DNC, not the fund-raising side.

Again, I am sure it is fascinating to probe into the ways in which President Clinton was able to win reelection in 1996. I am sure we could all learn a lot for the history books, but it is not relevant to this investigation.

There has been no credible allegation, that I am aware of, that Squier/Knapp or Penn and Schoen were engaged in any way, shape, or form in fund-raising. Accordingly, the ways in which their bills were reviewed is not relevant to this investigation. And, Counsel, I would ask once again that you state for the record the pertinence of this line of questions.

And I will refer you to McCarthy era Supreme Court decisions in United States versus Watson, United States versus Deutch. I will be delighted to supply you with the U.S. Reporter references that outline your obligation to state for the record in a clear, logical sequence, the chain by which your questions are relevant to the scope of this investigation, which, once again, is possible campaign fund-raising improprieties and possible violations of law.

Mr. NELSON. Mr. Zoeller, the Minority counsel's objection is also consistent with my understanding of the scope of these hearings and this investigation, and I join in that objection. I would be interested to know if you do have some statement to make on the relevancy of the subject matter.

Mr. ZOELLER. I do. I think the relevance, particularly regarding the witness' knowledge of the expenditures—and I will admit these are the expenditures, but when we are talking about the campaign irregularities and possible violations of law, the potential for coordination of political expenditures between independent labor unions and the 1996 campaigns of both the President and the work by the DNC, I think, clearly, have been raised in terms of potential illegalities of the coordination. In fact, there is a specific allegation by an earlier deponent that there was just such—

Mr. McLAUGHLIN. Counsel, that was an executive session deposition. I hope you are not about to characterize what a prior deponent's testimony was. That, as you know, would be a serious breach of this committee's rules.

I will note that you may already have committed a breach of those rules by stating that there is testimony in a prior deposition. Subject to the executive privilege rules of this committee, I suggest that you go no further.

Mr. ZOELLER. Would you like me to—

Mr. McLAUGHLIN. I would like you to continue your statement without breaching the executive session rules governing that prior deposition, if any.

Mr. NELSON. I think where we are right now is, what has been said is that there was a prior deposition, which probably doesn't tell anybody anything that they don't know. But if you would like to continue, please do so.

Mr. ZOELLER. There have been allegations made that there were campaign irregularities that border on an illegal coordination of activities.

Mr. McLAUGHLIN. I am familiar with all the testimony, and I will tell you that none of the allegations raised suggest any kind of illegal coordination took place by anybody in the press or any other sources.

Now, Counsel, what you have just outlined is a case for coordination of media efforts between the White House and an independent group. If those occurred, that would be a serious matter for this committee to look into, just like coordination of the Republican National Committee advertising with outside groups like the Ameri-

cans for Tax Reforms would also be a valid inquiry, one that I will note that this committee has shown no interest in pursuing.

Now, Counsel, we once again have to descend to the level of the specific questions that you are asking about bills for Squier/Knapp and Penn and Schoen. The matters in which those bills were reimbursed or reviewed, while—once again, while fascinating to me as a matter of historical record, are not relevant to the line of questions that you just outlined.

Why don't you ask questions that pertain to whether or not the White House coordinated, whether this witness has any personal knowledge of efforts to coordinate, DNC or Clinton-Gore media expenditures with outside groups.

Mr. NELSON. Mr. Zoeller, I just would also like to say one thing. I had kind of the same thought, I think, as Minority counsel. When you were explaining the relevance, I didn't really see any coherent relationship between what you said about the possibility of coordination of expenditures with other groups to the subject matter of how bills from campaign vendors were being reviewed at the White House. So I don't think it really answers the relevancy point.

I am not going to instruct the witness not to answer your specific question here, which, as I recall, was, can you describe generally the process of reviewing the Squier/Knapp and Penn and Schoen bills, although I do think that it is beyond the scope. But, you know, beyond that, I think we will take it question by question. I certainly don't think that it is an area that any of the specifics are likely to be relevant to your investigation. But why don't you just go ahead on that question.

EXAMINATION BY MR. ZOELLER:

Question. Do you remember my specific question?

Answer. You are asking what the process was?

Question. Yes.

Answer. The bills would come in; I would review them to see if they were appropriate; and if they were appropriate, then I would let the appropriate payers know that they could pay them.

Question. Who did they come in from?

Answer. Squier/Knapp, and Penn and Schoen.

Question. Were you asked to review for certain—what were you looking for in your review?

Mr. McLAUGHLIN. Again, I am going to note an objection. This is so far afield as to be—as to be beyond the horizon of relevance.

Mr. NELSON. Well, I have the same relevance objection, but, again, I am not going to instruct her not to answer that question as a general matter of what types of things was she looking for.

The WITNESS. I was looking for anything that seemed, you know, out of place; in particular, if they had done any work that the President hadn't authorized.

EXAMINATION BY MR. ZOELLER:

Question. How would you be informed as to what was authorized and what wasn't?

Answer. The President would have let Mr. Ickes know what was authorized.

Question. Are you familiar with the CC group? Does that term of art ring a bell?

Answer. No. I don't know it by that name.

Question. Okay.

Mr. NELSON. And you mean something other than the group of people who were cc'd on this document; right?

Mr. ZOELLER. Specifically, there were a number of documents that had a cc group, and I am wondering.

Mr. McLAUGHLIN. Are you testifying, Counsel?

Mr. ZOELLER. Wondering whether she knew something by that name, the CC Group?

The WITNESS. I don't remember that name.

Mr. ZOELLER. You have to state your name for the record. That's the going rule today.

Mr. DOLD. Bob Dold.

Mr. ZOELLER. With the Majority.

EXAMINATION BY MR. ZOELLER:

Question. How about the November 5th group?

Answer. That refers to—I am familiar with that.

Question. And what is your understanding of what that group is?

Answer. I believe it was an incorporated entity of consultants. It might have been a partnership. I don't use that in the legal sense, but—

Question. Did you do any work for Mr. Ickes at his direction regarding the coordination of expenditures by the DNC?

Mr. McLAUGHLIN. With?

Mr. NELSON. With?

The WITNESS. With State parties. I am sorry.

Mr. McLAUGHLIN. Coordination with State parties? Counsel, that goes to neither an impropriety nor an illegality. What is the pertinence of that question?

EXAMINATION BY MR. ZOELLER:

Question. Do you understand the question?

Answer. No.

Mr. McLAUGHLIN. Counsel, what's the pertinence of that question as to coordination of a national party with State parties?

The WITNESS. Could you ask it again?

Mr. McLAUGHLIN. Hold on just a second. I want to make the record clear here. You are declining to state for the record the pertinence?

Mr. ZOELLER. I will be willing—if there is a request for an offer to proof, I don't mind doing that.

Mr. McLAUGHLIN. It is a Watkins Deutch obligation that you hold to state a logical chain by which your questions are related to the scope of this investigation which pertains to campaign fund-raising improprieties or possible violations of law.

I am quite confident that you cannot, in your wildest imagination, construct a chain by which coordination of national party efforts with State parties is a fund-raising impropriety or a possible violation of law.

I am sure that you are as familiar with FECA as I am, because you are a member of the staff of this committee. Accordingly, you know that unlimited transfers of money can be made between national and State party committees. So coordination of their efforts doesn't in any way implicate the Federal Election Campaign Act. Perhaps you have some theory by which you can tie this together, and I am all ears and would be delighted to withdraw my objection if you can make that chain clear for the record.

Mr. ZOELLER. The coordination of expenditures by the national parties and the State parties, along with coordinated campaign accounts, Federal and soft, are all subject to the FEC and, therefore, part of campaign finance and the irregularities and improprieties.

Mr. McLAUGHLIN. Which part of FECA would coordination between the national party and State parties—what part of FECA would that violate? Can you state me a section?

Mr. ZOELLER. Well, in—

Mr. McLAUGHLIN. Because you know they are fully—national parties and State parties are fully authorized to coordinate their efforts.

Mr. ZOELLER. I do understand that. But I am not going to cite each portion—

Mr. McLAUGHLIN. You just say you understand that.

Mr. ZOELLER [continuing]. Of the FEC.

Mr. McLAUGHLIN. I would be delighted if you could, if you could cite any portion of the FEC that it would violate. May I suggest that on your lunch break perhaps you would want to review the Federal Election Campaign Act and ascertain whether or not there is, in fact, any section that that would violate?

Why don't you ask her about coordination between the White House, the DNC, or Clinton-Gore and outside groups rather than State parties, which as I have said is tied—

Mr. ZOELLER. I am getting there.

Mr. McLAUGHLIN. Why don't you skip to there now?

Mr. ZOELLER. No, thank you.

Mr. McLAUGHLIN. Counsel, you have not stated for the record—I will let the record speak for itself, but I will note my objection that you have not stated for the record any logical sequence by which the question you have posed and is now pending on the table is in any way related to the stated scope of this committee's investigation.

Mr. NELSON. I certainly agree with Minority counsel that the relevance seems remote, at best, but the last thing that happened was, the witness said she didn't understand the question. So maybe you should rephrase it and we can try to move forward.

EXAMINATION BY MR. ZOELLER:

Question. Okay. Did Mr. Ickes ever ask you to work with the DNC regarding the coordination of any expenditures by the DNC to State parties?

Mr. McLAUGHLIN. To State parties?

Mr. ZOELLER. Yes.

Mr. McLAUGHLIN. Or with State parties? Your question is both irrelevant and confusing. I, for one, don't understand it.

EXAMINATION BY MR. ZOELLER:

Question. Let me see if I can lay out the relevance to this. Were the bills to Squier/Knapp paid directly by the DNC or by State parties?

Mr. McLAUGHLIN. Objection as to relevance.

The WITNESS. I—

EXAMINATION BY MR. ZOELLER:

Question. If you know.

Answer. I guess I never actually saw the mechanism by which they were paid.

Question. Okay. So when you reviewed the bills, these were only what was produced by Squier/Knapp and you are not familiar with who would have paid them?

Mr. McLAUGHLIN. Objection as to relevance.

The WITNESS. What I have direct knowledge of is the person I told to pay them, and in the case of the DNC that would have been Brad Marshall, or it was Brad Marshall, who was at the national party.

EXAMINATION BY MR. ZOELLER:

Question. But you are not—this may help skip over a lot of this, and if I can ask the question again, would you have had any role in the payment of the bills, other than to contact Brad Marshall?

Answer. I had no role in paying them after I called Brad.

Question. And do you know what he would have done?

Mr. McLAUGHLIN. Would have done?

EXAMINATION BY MR. ZOELLER:

Question. What he did do after you called him?

Mr. NELSON. She actually answered that. She didn't have any direct knowledge of what happened after she told him.

EXAMINATION BY MR. ZOELLER:

Question. Are you aware of who paid the bills?

Mr. NELSON. When you say, "aware," do you mean to ask her for something other than personal knowledge?

Mr. ZOELLER. Yes; in any capacity.

Mr. NELSON. Has anybody ever told you anything about who paid the bills? I guess is what he is asking you.

The WITNESS. I think I have a general understanding that there was a mechanism of sharing the bills somehow with the State parties, but I don't know anything beyond that general awareness.

Mr. McLAUGHLIN. I will just note that, Counsel, once again, if it is your view that that in any way crosses the legal line, we will be delighted to draft up subpoenas to the RNC to discuss the way and to explore the ways in which the Republican National Committee and the Republican State parties shared, pursuant to their rights under FECA, the expenses for the so-called issue ads that the RNC ran in 1996.

Mr. NELSON. Mr. Zoeller, are we finished with this document? Do you want to mark it?

Mr. ZOELLER. I was going to try to see if I could link up where I was headed just so it wouldn't be too confusing. Let's go ahead; we will mark this as JO-4 and submit it.

[O'Connor Deposition Exhibit No. JO-4 was marked for identification.]

EXAMINATION BY MR. ZOELLER:

Question. Just to get back to the original question, which was the process by which this screening of the bills took place, who else was involved in the process?

Mr. McLAUGHLIN. Objection as to relevance.

The WITNESS. I don't know. The part that I was involved with was, the bills came into my office and I looked at them.

EXAMINATION BY MR. ZOELLER:

Question. So it came from Squier/Knapp or Penn and Schoen and you passed it on to Brad Marshall?

Answer. Uh-huh, or somebody at Clinton-Gore if it was a bill that should be paid by Clinton-Gore.

Question. Okay. Thank you.

Answer. I think I might have also told the lawyers for the different entities, you know, when somebody was good to be paid.

Question. Was there a legal review of the bills?

Answer. The lawyers for Clinton-Gore and the DNC analyzed the bills to determine which entity had to pay.

Question. Who paid what portion of the bills?

Answer. Correct; you know, which ad had to be paid by the Clinton-Gore versus by the DNC.

Question. You had stated earlier that you had several interns work for you.

Answer. Uh-huh.

Question. Did you have any interns that were paid for by DNC?

Answer. My interns were not paid.

Question. Where did you get your interns, if—

Answer. There was a White House intern office.

Question. Okay. That's the answer that I was looking for. Thank you.

Are you familiar with the funnel system?

Mr. McLAUGHLIN. Objection. The funnel system? What on earth are you talking about?

The WITNESS. It sounds like a tornado. Sorry.

Mr. McLAUGHLIN. There is a meteorological term "funnel system." I assume that's not what you are talking about, Counsel.

Mr. ZOELLER. Do you have an objection?

The WITNESS. I actually don't understand what you are talking about.

Mr. NELSON. I think that the witness already said she didn't understand. I don't have any objection beyond that.

EXAMINATION BY MR. ZOELLER:

Question. Again, I don't want to talk about what else has gone on in depositions, but you are not familiar with a term of art, "the funnel system"?

Answer. No.

Mr. McLAUGHLIN. I am going to object to that characterization of what may or may not have gone on in depositions, not that you would ever be referring to what is going on in depositions, Counsel, but even if you were, I would object to that characterization as there being a term of art called "a funnel system."

The WITNESS. I don't know of a term of art called "the funnel system."

EXAMINATION BY MR. ZOELLER:

Question. Okay. How would you have received legal analysis of issues that you thought raised a legal question in your capacity with Mr. Ickes?

Answer. Could you put a scope on that?

Question. Well, what I am looking for is, when you are in the course of your duties with Mr. Ickes, if there was a legal question that was raised, how would you refer that to the Office of Counsel? What would be the process?

Answer. I would call them.

Question. And someone specifically?

Answer. Depending on the issue, I would call whichever lawyer was appropriate.

Question. And that was done by your own familiarity with the Counsel's Office? Did they—

Answer. Yes.

Question [continuing]. Segregate between who did what issues?

Mr. McLAUGHLIN. Is this witness really the best witness to ask about the structure of Counsel's Office?

The WITNESS. I don't really know how they were set up, but I generally was able to figure out which one of them I needed to talk to on a given matter.

EXAMINATION BY MR. ZOELLER:

Question. Particularly in areas of contacting Federal agencies, did you have someone that you would have referred that type of question to?

Mr. McLAUGHLIN. A legal question—just so the record is clear, Counsel, a legal question regarding contacting Federal agencies?

EXAMINATION BY MR. ZOELLER:

Question. Do you understand the question?

Answer. I do.

Mr. McLAUGHLIN. It's a question from me, Counsel.

Mr. NELSON. So the question—

Mr. McLAUGHLIN. My question is, are you talking about—

Mr. ZOELLER. Is there an objection?

Mr. McLAUGHLIN. No, it is not an objection. It is for clarification of the witness. I am trying to assist you in creating a clear record. Is your question concerning legal advice regarding contacts with Federal agencies or just any advice?

EXAMINATION BY MR. ZOELLER:

Question. If you were to refer a question to legal counsel, who would you have talked to in—that's not the—

Mr. ZOELLER. could you read back the original question?

[The reporter read back as requested.]

The WITNESS. Do you want me to state what I think you are asking?

Mr. NELSON. Actually, I have got something that I would like to raise with respect to the way that question was framed, and, you know, a lot of times, as questioners, we fall into the habit of using "would" when we meant "did." And a lot of times, people know the "would" meant "did."

In this case, I am not sure whether you are asking her a hypothetical question: If an issue like this had ever come up, who do you think you would have asked? or whether you are asking her a question about things that actually did happen or did not happen.

Mr. McLAUGHLIN. My suggestion, Counsel, would be, why don't you establish a proper foundation? Why don't you establish whether or not she ever did make any such contacts or seek legal advice on such contacts?

Mr. ZOELLER. Well, I was—

Mr. McLAUGHLIN. Foundation first; question later.

EXAMINATION BY MR. ZOELLER:

Question. I don't mind asking that, but I assume you did, but did you ever contact legal counsel regarding communications with departments or agencies?

Mr. NELSON. And I will just instruct the witness that at that level of generality, where the question refers only to general subject matters of contacting Counsel's Office, I will allow you to answer that yes or no question.

The WITNESS. I did contact Counsel's Office.

EXAMINATION BY MR. ZOELLER:

Question. And with your knowledge of the way the Counsel's Office was structured, who would you have referred that question to, that type of question?

Mr. McLAUGHLIN. Did or who?

Mr. NELSON. Whom did you refer that type of question to?

The WITNESS. The counsel who handled those kinds of issues changed from time to time. So I did refer the question to whoever it was on the day that I had the question.

EXAMINATION BY MR. ZOELLER:

Question. Do you remember any specific questions that you would have—I mean, what issues?

Mr. McLAUGHLIN. Are you now just going to delve—

Mr. NELSON. I will allow her to answer that yes or no.

The question is, do you remember specific issues about which you contacted counsel with respect to agency contacts?

Mr. ZOELLER. That's correct.

The WITNESS. Yes.

EXAMINATION BY MR. ZOELLER:

Question. And what issues did you raise?

Mr. NELSON. Well, I think at this point—

Mr. ZOELLER. I am not asking for what counsel she received. I am asking—

Mr. McLAUGHLIN. But it is both—

Mr. NELSON. I think that you are approaching a point where I think that the substance of whatever it was she raised with White House Counsel's Office is a matter that is very likely at least within the ball park of possible privileges that might be asserted by the White House, privileges that Mrs. O'Connor and I are neither in a position to assert nor to waive. And in the absence of some instruction by the White House as to whether or not that question can be answered, I am not going to allow her to answer it.

Mr. McLAUGHLIN. And I will just note for the record that if White House counsel were permitted to attend these depositions, as they have in the Senate, we could have counsel come right over, navigate these waters, get the answers to the questions that have been—get the answers that counsel is entitled to, to these questions, without treading into the grounds of attorney/client privilege.

However, the Republicans have decided that they don't want to allow White House counsel to be here to help navigate these waters, so we are left in a position where counsel is forced to instruct his witness not to answer if you tread into that ground.

Mr. NELSON. And I would further add, by the way, that I think the question as phrased was to identify any issues as to which she ever spoke to the White House Counsel's Office with regard to the question of agency contact, which is so far beyond any conceivable scope to this committee's inquiry that it can't possibly satisfy even a relevance standard.

Mr. McLAUGHLIN. And I will again add for the record my additional objection as to relevance that contacts between Ms. O'Connor in her capacity as an assistant to Harold Ickes with Counsel's Office about contacts with Federal agencies is one of the most flagrant examples of bald fishing that I have seen yet in these depositions.

Mr. ZOELLER. Was that an instruction not to answer?

Mr. NELSON. I did instruct her not to answer sometime back.

Mr. ZOELLER. Okay, somewhere in there. And I understand the objection is that it is privileged communications between the White House—

Mr. NELSON. No. The objection is that it is in an area where there may be a privilege that this witness can neither assert nor waive.

Mr. ZOELLER. I see. Okay.

Mr. NELSON. Unless she has guidance as to whether it is permissible from the standpoint of the White House for her to answer that question, I have instructed her not to answer it as a part of her responsibilities as a former White House employee.

Mr. McLAUGHLIN. And there is—

Mr. NELSON. And I am further objecting that, you know, Ms. O'Connor, in her time in the White House, handled policy matters that involved contacts with agencies that had to do with a wide range of issues that have nothing to do with campaign finance. And an unrestricted inquiry into subjects on which she consulted with White House Counsel's Office not tied in any way to campaign finance is just clearly beyond the scope.

Mr. ZOELLER. Well, let me see if I can avoid some of your concerns. I understand your point in raising the potential White House objection to this. I did not realize that you were coming from that direction.

EXAMINATION BY MR. ZOELLER:

Question. Back to—you know, I will go back just a second to these bills on Squier/Knapp and Penn and Schoen. Did you ever set up meetings at Mr. Ickes' request between DNC contractors or officials? And by "contractors," I mean agents who were hired by DNC and labor organizations who had independent expenditures on campaign activities.

Mr. McLAUGHLIN. Your question assumes so many things, it is hard to know where to begin, Counsel. Why don't you begin by asking the predicate questions to establish a foundation: Does she know who DNC contractors were other than these consultants? Does she know which?

Mr. ZOELLER. These are the DNC contractors.

Mr. McLAUGHLIN. Right, these are, but you have just asked a question about others. Your question—hang on, Counsel. Your question goes beyond that. You might want to ask her if she knows which labor organizations were running independent

expenditures campaigns or not. Otherwise, it is going to be difficult for her to answer one way or another.

And, finally, why don't you just ask her if she set up—just simply ask the basic question of whether she set up particular meetings between labor officials and DNC officials or labor officials and DNC contractors. I mean, why don't you ask your questions with some precision?

Mr. ZOELLER. I was going to ask all of those questions.

Mr. McLAUGHLIN. You just asked a big one with all of them, Counsel.

Mr. ZOELLER. I was going to see if she had any knowledge of these areas without asking a lot of questions.

Mr. NELSON. Do you have the question in mind?

The WITNESS. I don't know what the question was.

Mr. ZOELLER. Let me go back. I don't mind asking a lot of questions.

EXAMINATION BY MR. ZOELLER:

Question. Did you set up meetings on Mr. Ickes' behalf with labor officials or organizations working with labor officials?

Answer. With whom? Between them and whom? Between them and me?

Question. Just any of them. Any of them?

Answer. Did I ever meet with them, are you asking?

Mr. NELSON. Did you ever set up any meeting involving a labor organization or official? That's the question now.

The WITNESS. Yes.

EXAMINATION BY MR. ZOELLER:

Question. Sure. And you worked with—did you work with Squier/Knapp and set up meetings with Squier/Knapp at Mr. Ickes' request?

Answer. I met with Squier/Knapp at Mr. Ickes' request.

Question. Okay. Did you ever set up any other meetings with Squier/Knapp and other people in the White House, either at your own or Mr. Ickes' request?

Answer. I don't think I set any up, no.

Question. Do you know of any meetings between Mr.—any of the people, Squier/Knapp, Penn and Schoen, or their employees and labor officials?

Answer. No.

Question. The same question regarding whether you know of any meetings between Squier/Knapp, Penn and Schoen, and contractors working for labor?

Answer. Actually, let me go back. Let me just clarify that. There was one meeting that I didn't set up but that I am aware of, where there were some labor union people, and I believe Mark Penn was in the room at the time.

Question. What was the gist of that meeting?

Answer. I believe the labor officials were giving a policy discussion on an issue they cared about and the White House thought it was relevant for Mr. Penn to hear their discussion.

Mr. McLAUGHLIN. For clarification, were you present at that meeting?

The WITNESS. Yes.

EXAMINATION BY MR. ZOELLER:

Question. Who else was present at the meeting?

Answer. I don't remember.

Question. Are you aware of any campaign commercials that were produced by labor organizations that were shown to either you or Mr. Ickes?

Answer. I don't believe—well, no—I mean, no. I can't speak for Mr. Ickes. And for myself, I don't think I ever saw their commercials. It is possible that I did. Actually, it is possible that I have seen them.

Question. Okay. I come back to the original question, which is, any knowledge you might have regarding the campaign consultants with Squier/Knapp, Penn and Schoen, meeting with campaign consultants of independent groups, such as labor groups, in the White House?

Answer. The only meeting I know about was the one that I referred to, and it wasn't about campaign commercials. It was just so Mr. Penn could hear essentially the policy discussion that the labor folks were briefing on. That's the only meeting I know of between any of the Penn and Schoen or Squier/Knapp staff for principals with labor leaders. I am not aware of any other meetings.

Mr. NELSON. And I would just add for the benefit of the record and the witness that the question—this question was not about meetings between Squier/Knapp and Penn and Schoen and labor officials but, rather, between Squier/Knapp and Penn

and Schoen and campaign consultants working for labor organizations, which doesn't sound like the meeting that you described even falls into that category.

EXAMINATION BY MR. ZOELLER:

Question. Well, maybe I will ask who you remember was present at the meeting.

Answer. I don't remember, other than just remembering that Mr. Penn was there.

Question. Okay. Are you familiar with any of the consultants that the labor organizations hired to do their commercials?

Answer. Well, not offhand, no. I don't think so. You are asking if I know who made their ads?

Question. Yes, or did their polls or kind of the general areas within the campaign organizations.

Mr. McLAUGHLIN. I am going to—

The WITNESS. I think I—

Mr. McLAUGHLIN. Once again, I am going to object. This is just so far afield from the legitimate subject matter of this investigation.

The WITNESS. I think I am aware of who made their—who did their polls. I don't know who made their ads.

Mr. ZOELLER. Let's go off the record.

[Whereupon, at 12:05 p.m., the deposition recessed, to reconvene at 1 p.m.]

Mr. ZOELLER. Can we go on the record. We're back on the record. It's following our lunch break and the deposition with Jennifer O'Connor. Joining the two counsels is Bob Dold with the Majority. Do I need to say—okay.

I'm going to start into a completely different subject for a second, if I could.

The WITNESS. Can I raise something first?

Mr. ZOELLER. Sure.

The WITNESS. There was something that occurred to me over lunch that I just wanted to clarify, which is when you were talking about labor ads, you know, whether I had seen them and that sort of thing, I took you to be talking about labor campaign ads. They also ran issue ads, and I did see their issue ads. After they ran them, they tended to give me a copy as a courtesy.

So I just want to make that clear.

EXAMINATION BY MR. ZOELLER:

Question. So after they had already been produced and—

Answer. Yeah.

Question. Okay.

Just who would have been the ones to give you the ads?

Answer. Whoever from the labor union thought it would be interesting for me to see it. They'd send over a copy and say, oh, by the way, this is what we're running.

Question. Do you have any specific recollection of anyone certain that did that?

Answer. I don't have a specific recollection, no.

Question. Any specific recollection of the union?

Answer. I think it was usually the AFL.

Question. So that would be the AFL or their affiliate?

Answer. The AFL itself.

Question. Okay.

And now for something completely different:

There is a series of documents that have been produced on Friday night that deal with I think what's generally discussed as the Hudson issue.

Are you familiar with the Hudson issue?

Answer. Yes.

Question. In terms of your own documents, the things that you would have produced over your own name, how would you have filed those?

Mr. NELSON. You mean documents about the Hudson related matters?

Mr. ZOELLER. Yes, specifically about this.

EXAMINATION BY MR. ZOELLER:

Question. Do you know where you would have filed that, in a specific place?

Answer. Well, I had file cabinets in my office, and that's where I would have put it temporarily. Ultimately, I left everything, you know, with the record keeping process at the White House.

Question. Okay.

Had you been asked to help go through a records search by anyone?

Answer. Is that any kind of privileged thing?

Question. Well, if it was done by counsel, but anyone outside of your own counsel or White House counsel?

Answer. Outside of White House counsel or my own counsel; what's the question again?

Question. Did you help with the document search of materials for this?

Answer. I don't think so.

Question. Okay.

Do you know where you would have left your own files regarding the Hudson issue?

Answer. I left them in the White House.

Question. Okay.

Well, I apologize for—we just got them on Friday, so I kind of reiterate the awkward nature of this.

Did you cover Native American issues for Mr. Ickes?

Answer. For a period of time, yes.

Question. And what was the period of time?

Answer. I don't remember exactly, but I just meant that as a way of indicating that I didn't do it for the entire time that I was there.

Question. Was there a specific time you can remember where this was part of your role?

Answer. I do remember that at the time that the Hudson decision was made I was covering Native American issues.

Question. Okay.

Did you cover all Native American issues or just specific ones at the direction of Mr. Ickes?

Answer. Just specific ones at the direction of Mr. Ickes.

Question. Would you have talked to anyone other than Mr. Ickes about the particular Hudson issue?

Answer. Do you mean did I?

Question. Yes, did you?

Answer. Yes.

Question. And who else would you have—did you talk to?

Answer. Well, I had one conversation with an official at the Interior Department, for instance. I mean, I may have talked to many different people. If you want to sort of go through who you would like to know if I talked to about it or not, we can do that, but I do remember talking to one official at the Interior Department about it.

Question. Who did you talk to, if you remember?

Answer. Her name was Heather Sibbison.

Question. Do you know Patrick O'Connor?

Answer. I don't think so. I don't believe I've ever met him.

Question. I'm glad I didn't ask whether he was related.

Mr. NELSON. It's in one of the news accounts. It says no relation to Jennifer O'Connor.

The WITNESS. At least none that we're aware of, but I haven't done a family tree search.

EXAMINATION BY MR. ZOELLER:

Question. Okay.

Do you know what position—is it Miss Sibbison, had at Interior?

Answer. No.

Question. Were you referred to her by someone?

Answer. I don't remember.

Question. And in terms of kind of the process, would you talk to her directly, or did you talk to someone at legislative affairs or were there other people involved in the discussion or just the two of you?

Answer. On the one occasion that I talked to her, it was the two of us on the telephone.

Question. Okay.

And to the best of your recollection what was the conversation?

Answer. I called her. I gave a general disclaiming statement along the lines of I'm making a status inquiry, don't want to influence anything, don't tell me anything you're not supposed to tell me, I'm interested in what the status is of this issue and described what I was talking about.

She said to me, we're in the midst of a decision-making process, we're going to finish at some time soon. She probably told me when, but I don't remember what she said exactly, but she said it was going to be finished soon. She gave a general characterization of sort of what the decisionmakers had been hearing from constituents and groups and others who were interested in it, and she gave her own per-

sonal opinion that she thought was based on that. It was highly likely that the department would turn down the request.

But she emphasized that the decisionmaking hadn't been done yet, and I thanked her, and I think that was about it.

Question. Do you remember your conversation with Mr. Ickes regarding the Hudson issue?

Mr. NELSON. Well, any conversations—

EXAMINATION BY MR. ZOELLER:

Question. Let me start with, do you remember him asking you to get involved in this issue at his—was it at his behalf; let me just start with that question?

Answer. Yes.

Question. And do you recall the conversation asking you to—

Answer. Vaguely.

Question. What was the general gist of the reason he asked you to take this issue for him?

Answer. He didn't give me a reason.

Question. Okay. Did you speak with anyone at DNC regarding the issue?

Answer. I had a conversation with Don Fowler once about it.

Question. And when was that conversation?

Answer. I don't remember.

Question. Was it before you were called to Interior?

Answer. No, it was sometime after.

Question. And did you call Mr. Fowler or did he call you?

Answer. He called me.

Question. And do you recall what he—what the subject of his call was about?

Answer. He was looking for a status—he wanted to know when the Interior Department would have finished its decision-making process.

Question. Okay. Did he tell you about any other communications that he had had on the subject?

Answer. He said the reason he was looking for the information was that he wanted to tell somebody—I don't think he said who—what the status was.

Question. Did he mention any communications that he had with Mr. O'Connor—

Answer. I don't think he said who he had been talking to. He just gave me—somehow in the conversation he communicated the idea that he was interested in the status report from me so that he could provide a status report to somebody else.

Question. Okay.

Let's say throughout this, your working on this issue for Mr. Ickes and prior to press accounts, were you ever aware at any time of the financial contributions of the Native Americans to the DNC?

Answer. Of all Native Americans?

Question. Particularly involving the Hudson issue.

Mr. NELSON. Well, when you say financial contributions involving the Hudson issue, I think what I take your question to mean, financial contributions by Indian tribes who were identified as having some interest in the issue of whether the Wisconsin bands would be permitted to operate on Indian gaming establishments.

Mr. ZOELLER. That's essentially the question. If you are familiar at all with—

The WITNESS. Well, if what you're asking me is did I know that there were contributions by the tribes that Patrick O'Connor represented, my answer is that he sent a letter to Mr. Ickes in which he said that they had been DNC financial supporters. I think that's the only awareness I had of it. Nobody ever told me how much they gave or when they gave or anything like that.

EXAMINATION BY MR. ZOELLER:

Question. Did Mr. Fowler mention the fact that they were contributors during his conversation with you?

Answer. I don't think so.

Question. Did Mr. Fowler ever contact you about any other matters besides this Hudson issue that you can recall?

Answer. I recall that he contacted me about various matters at various times. I don't remember any specific one offhand.

Question. Would he have ever contacted you regarding—did he ever contact you regarding any issues that were not related to donors?

Answer. I believe every issue he ever contacted me about was not related—well, let me clarify that. I don't necessarily know who is a donor and who is not, you know what I mean, so if he called because, you know, something was relevant to

a labor issue, for instance, it wouldn't occur to me that that person is a donor, although if I thought about it, they probably are donors, you know what I mean?

So he never called me about somebody saying I'm calling about a donor. However, the kinds of things he called me about, you know, might have been, for instance, labor issues, and labor issues, to me, don't involve donors, but to him they might involve donors because labor unions are donors.

Question. I understand.

On the Native American issues, did he ever—there was only one call that you remember from him?

Answer. Only one call that I remember.

Question. Okay.

Did he have any other conversations with Mr. Ickes that you are aware of regarding the Hudson issue?

Answer. I'm not aware of any conversations he had with Mr. Ickes about the Hudson issue.

Question. Did you have any follow-up calls with anyone else over at DNC other than Mr. Fowler?

Answer. About the Hudson issue?

Question. Yes.

Answer. Not that I remember. I don't think so.

Question. And were you ever contacted by anyone to help set up a meeting or specifically any meetings regarding this issue?

Answer. Not that I remember.

Question. Were you aware of any meetings between Mr. Fowler and Larry Kitto, Steve Hildebrand, or Mr. Mercer?

Answer. Does Mr. Mercer refer to David Mercer?

Question. Yes.

Mr. NELSON. And the question is, does she know of any meetings that they had with Fowler about this Hudson issue?

Mr. ZOELLER. Yes.

The WITNESS. No.

EXAMINATION BY MR. ZOELLER:

Question. Are you aware of any meetings that took place that you either learned from conversations at Interior or Mr. Fowler?

Answer. About this issue?

Mr. NELSON. I'm sorry, could you do that question again?

Mr. ZOELLER. Are you aware of any other meetings that took place between DNC staff and Interior staff?

Mr. NELSON. I guess the problem that I have with the question is the looseness of the term "awareness." I think that there have been some press accounts and some claims made in litigation about meetings, and if she read those things I don't know whether you would consider her to have awareness of those meetings or not. I guess—so I'm objecting on the grounds of vagueness. I certainly don't have any objection to questions that ask her about her personal knowledge or to any information that she received from someone who told her something.

Mr. ZOELLER. That's fair enough.

The WITNESS. Just for the record, when you asked me those questions I'm assuming you're asking about direct knowledge, not if I read stuff in the paper.

Mr. ZOELLER. Not newspaper knowledge, no, that's correct. I will clarify that I'm specifically looking at firsthand knowledge or knowledge that someone passed on to you outside of reading in the newspapers.

The WITNESS. I don't know of any meetings between Mr. Fowler or a DNC staff member in the Department of the Interior on this issue.

Mr. ZOELLER. Okay.

EXAMINATION BY MR. ZOELLER:

Question. Are you aware of or have any knowledge of meetings between White House staff and Interior staff regarding this issue?

Answer. No.

Question. Okay.

Let me ask whether you ever contacted anyone at Peat Marwick regarding this issue.

Answer. No.

Question. Were you aware of Peat Marwick's role in the issue at all?

Mr. McLAUGHLIN. Time frame?

Mr. ZOELLER. Yeah, any time. I mean, do you know what their role was?

The WITNESS. I didn't—didn't Patrick O'Connor's letter reference them, also?

Mr. ZOELLER. Yes, I think it did.

The WITNESS. I think that's the awareness that I have that they had referenced it in that letter.

EXAMINATION BY MR. ZOELLER:

Question. But you didn't work with anyone there or have any specific knowledge of that relationship?

Answer. No.

Question. Okay.

Following your telephone call from Miss Sibbison at Interior?

Answer. Just to clarify, I called her.

Question. Okay. Was there just the one telephone conversation or did she call you back.

Mr. McLAUGHLIN. Asked and answered.

Mr. ZOELLER. I forgot.

The WITNESS. I think there was just one. I only remember one.

Mr. ZOELLER. Okay. This is one I really should—can you show that to Andrew?

I'm about to show a document that's stamped EOP 064254—I'll let you—and I ask if you remember receiving this?

The WITNESS. No.

EXAMINATION BY MR. ZOELLER:

Question. Do you remember seeing it at some point?

Answer. Well, I mean, reading it over and thinking about the context, I'm sure I did see it, but I don't actually remember right now seeing it.

Question. Do you recall whether this was one of several between Miss Sibbison and yourself?

Answer. No, my guess would be that this is the only exchange of faxes that there was.

Question. It refers to draft responses. Do you recall the purpose of her sending you this?

Answer. I believe that again my memory on this is a little fuzzy, but I think that either Mr. Ickes or the President or maybe both of them, maybe somebody else in the White House had received a letter from a group of Members of Congress that had asked what was going on on this issue and it might have expressed an opinion on how the issue ought to be resolved, and I believe that Mr. Ickes asked me to figure out how to respond to the letter to Members of Congress, and I think I asked Miss Sibbison for a draft response, and she sent me two because it was unclear when we would mail the response from the White House, and if we wanted to mail a response prior to Interior's decision, then we'd have to say their close decision, we'll let you know when they're done, and if we were to mail the response after they were finished, then we could say they're done and here's the answer, and so she sent me two drafts so that I would have the option of mailing it before or after the decision.

Question. Did you work with anybody else regarding this? Were there other people in the White House that you worked with on this issue?

Answer. I don't think so.

Question. Anyone in legislative affairs that would have worked with the Members?

Answer. Not that I remember.

Mr. ZOELLER. Okay. We'll mark this JO-5.

[O'Connor Deposition Exhibit No. JO-5 was marked for identification.]

EXAMINATION BY MR. ZOELLER:

Question. In your discussions following this drafting of response, did you have follow-up conversations with Mr. Ickes?

Answer. I don't remember. It's highly likely that I told him what was happening, but I don't actually specifically remember talking to him about it at all. It's possible I sent him a memo. You know, it wasn't something that was particularly high on the radar screen, I don't think, so—

Question. Were there other people within the White House that you briefed on this subject besides Mr. Ickes?

Answer. Not that I recall.

Question. Were you aware of any conversations—I apologize. This may have been asked and answered, but were you aware of any other conversations that Mr. Ickes had with either the DNC or Interior Department about this issue?

Answer. I'm not aware that he had any conversations with either of those organizations at any time about this issue.

Question. Okay.

This may get us back to where we were earlier, but in—before you contacted the Department of Interior, did you seek counsel regarding the contact?

Mr. NELSON. Can I just have a minute to discuss this subject matter, and maybe we can—

Mr. ZOELLER. I'm trying to avoid your earlier—

Mr. NELSON. I'd just like to go off the record and confer with my client.

Mr. ZOELLER. Fine, we'll go off the record.

[Discussion off the record.]

Mr. NELSON. If you read back the question, I think that the witness can just go ahead and answer it.

[The reporter read back as requested.]

The WITNESS. No.

EXAMINATION BY MR. ZOELLER:

Question. Does there—did there come a time when you were involved in this issue that it became—that it was in the media?

Answer. I'm not sure what you mean, I'm sorry.

Question. Do you recall at any point when you were working on this, the Hudson issue, whether you were asked to produce any materials for press inquiry?

Answer. No, I don't think I did that.

Question. And would you have produced anything for other people who were working on—

Mr. McLAUGHLIN. Did you produce—

Mr. ZOELLER. Did you produce.

The WITNESS. I don't remember producing anything relating to the media.

EXAMINATION BY MR. ZOELLER:

Question. Okay. Did Mr. Ickes share with you letters that he received on this issue?

Answer. I think he gave me the letter for Mr. O'Connor, and he also gave me the letter from the Members of Congress.

Question. Did you ever speak with anyone at the DNC regarding other fund-raising—let me rephrase that.

Did you ever speak with anyone at the DNC who was tasked with fund-raising from Native American groups?

Answer. Not that I'm aware of. I mean, I've talked to staff there. I don't know who was doing the fund-raising for Native Americans groups.

Question. Okay, that's the answer.

Did you remember the Secretary's decision being announced?

Answer. No.

Question. Do you recall whether the White House was given any prior—let's call it a heads up that the decision was going to be announced?

Answer. I don't remember.

Question. In your communications with Interior, and particularly your testimony regarding the two drafts, did they explain when the decision would come down?

Answer. I think so.

Question. And what was your understanding of the timing of it?

Answer. I don't remember, but I think at the point at which I got the two drafts I had some sense that we were within a week of there being a decision, and therefore the reason for the two drafts was if you send it this week versus you send it next week.

Question. So it was imminent?

Answer. Yeah.

Question. Do you remember any discussions you may have had with Mr. Ickes regarding either the letter that he received for Mr. O'Connor or other communications for Mr. O'Connor?

Answer. We had a conversation about the letter he received from Mr. O'Connor at the time which he asked me to look into the matter.

Question. Do you know whether there were other telephone calls or letters that were exchanged between Mr. Ickes and Mr. O'Connor?

Answer. None that I'm aware of.

Question. Excuse me for just a second.

Do you have any knowledge of communications between lobbyists for the gaming industry regarding this issue?

Answer. I don't know of any. Although I don't know who the lobbyists for the gambling industry were so—

Question. That may be the answer I'm looking for.

I believe you testified that this was not very high on the radar screen.

Answer. From my perception, it wasn't.

Question. Do you remember how long this issue was on your desk—I mean, how long were you involved in the general discussion between when it was first asked, when Mr. Ickes first asked you to handle this for him or however he described that and when the decision was made, how long a period are we talking about?

Answer. I don't know. It was off my desk after the decision was made, though.

Question. And it was not high on your radar screen. In the conversation with Mr. Fowler, did he indicate that it was very high on his radar screen?

Answer. I don't recall him saying one way or the other.

Question. Were there any other issues that he brought up at the same time or was it solely dedicated to this issue?

Answer. It was solely dedicated to this issue.

Question. Not to shift gears too quickly, but find my place in my—where we were—

Do you have any knowledge about the telephone calls made by either the President or the Vice President or the First Lady or Mrs. Gore that were done at the DNC's request to donors?

Mr. McLAUGHLIN. If any.

The WITNESS. If any of them happened, I don't know about them.

EXAMINATION BY MR. ZOELLER:

Question. All right.

Would you or did you prepare any memorandum for either Mr. Ickes or—let's say the President or Vice President regarding calls to labor leaders? Would that have been in your bailiwick?

Answer. Are you asking about fund-raising calls to—

Question. Specifically about—let's call it finance related I think is the—

Mr. McLAUGHLIN. Is that a term of art you want to define or you want to just say fund-raising calls?

Mr. ZOELLER. I don't want to limit it to just fund-raising because, as you pointed out, that the labor officials are involved in a lot more than just straight fund-raising, but would you have prepared background material for calls to labor leaders?

Mr. McLAUGHLIN. Clarify the question then, Counsel.

Mr. ZOELLER. All right. It may be a little—

Mr. NELSON. The last phrasing didn't suggest any subject matter limitations on the calls—

Mr. ZOELLER. Well, I'll start, let's just talk about phone calls.

EXAMINATION BY MR. ZOELLER:

Question. Would you have prepared background material for any specific phone calls by the President or the Vice President to labor leaders?

Mr. NELSON. Did she?

The WITNESS. Did I?

Mr. ZOELLER. Did you.

The WITNESS. Yes.

EXAMINATION BY MR. ZOELLER:

Question. And do you remember the subject matter of any—let me—were there several or one or two or how many, if you can recall?

Answer. More than one.

Question. Were there more than one type or were they always on the same general subject?

Answer. I actually don't recall specifically what they were about, but I'm sure they were all on different subjects.

Question. Were there any calls that were specifically on fund-raising?

Answer. No.

Question. Were there any calls specifically on fund-raising events?

Answer. No.

Question. Were you aware of any other phone calls made by the President or Vice President to potential donors?

Answer. No.

Mr. McLAUGHLIN. You used the word "other"—just mean in general any phone calls to any potential donors? In other words, I don't want the record to imply that there was earlier testimony—

Mr. ZOELLER. No, I—so the answer is no?

The WITNESS. I don't have any direct personal knowledge of any fund-raising phone calls by the President and Vice President.

EXAMINATION BY MR. ZOELLER:

Question. Do you have any indirect knowledge other than newspapers?

Answer. No.

Question. Are you aware of the White House database system?

Answer. Meaning do I know that it existed?

Question. Uh-huh.

Answer. Yes.

Question. Did you have access to it?

Answer. That's possible I did. I mean, I didn't use it very much, but I think I probably could have.

Question. Well, what could you have used it for?

Answer. I could have used it to look up whether or not people had been in the White House.

Mr. McLAUGHLIN. Do you have any specific recollection along those lines having done so?

The WITNESS. Yeah, I mean I think I might have once or twice.

EXAMINATION BY MR. ZOELLER:

Question. But do you have a general knowledge of what was in the database?

Answer. Sure.

Question. And what's your knowledge of what's in it?

Answer. The names and addresses and other identifying information about people who had been in the White House.

Question. Okay.

Would you have ever produced anything—

Mr. McLAUGHLIN. Did you?

EXAMINATION BY MR. ZOELLER:

Question. Did you ever produce anything to be put into the White House database?

Answer. I never produced anything specifically for the purpose of putting it into the database, however I'm sure I produced lists of people to come to the White House at different times, and that information would have eventually ended up in the database after they had come and gone.

Question. But it's your testimony that—

Answer. I didn't put it in the database; somebody else would have, though, after they had come and gone.

Question. Is it your testimony that you would provide names of people who actually were attending something at the White House?

Mr. NELSON. Provide them to whom?

Mr. ZOELLER. Being put into the White House data system.

The WITNESS. I don't know how things got into the database, but I know that it contained information about people who had been there, and the reason I'm saying that the people—my association with people coming to the White House would be, for example, if I was organizing a reception for the President and I, therefore, had to figure out the invite list, and I would do that in conjunction with anybody else involved and give it to the social secretary and—so she could prepare for them to come to the reception, and at some point whoever came would end up in the database, but I have no idea how.

Mr. McLAUGHLIN. Can I ask a clarifying question, Counsel?

Mr. ZOELLER. Sure.

Mr. McLAUGHLIN. So is it the case that—is it the case that your involvement with the WhoDB is only tangential to the ongoing process of providing names to the social office for names for events at the White House?

The WITNESS. It's that, and I think on one or two occasions, as I said before, I was curious as to whether or not a particular person had been there recently, and I looked up his or her name to see if they had been there.

Mr. McLAUGHLIN. Okay.

The WITNESS. You know, for instance, if I was trying to figure out do I need to invite Mr. X to this reception, I only did this once or twice, but I looked up Mr.

X's name to see if he's been to one recently. If he been, then I wasn't as concerned if he had been there——

EXAMINATION BY MR. ZOELLER:

Question. So you would use it as a check to see whether somebody had been a repeat visitor and——

Answer. Right.

Question. Okay.

Mr. ZOELLER. I'm showing the witness and Counsel what's marked as M 33189. Are you familiar with this handwriting?

Mr. McLAUGHLIN. Counsel, can I ask what's the source of this document.

Mr. ZOELLER. I honestly don't know. I'm asking her, it may be her handwriting, but I'm not sure.

Mr. McLAUGHLIN. I'm sorry, what's the——

Mr. ZOELLER. Um—I don't know.

Mr. McLAUGHLIN. Do you know what agency this is from? Do you know what party produced this document to the committee?

Mr. ZOELLER. If it would clarify, I'd be glad to track down the source.

Mr. McLAUGHLIN. Certainly before we show a document—I mean, before you quiz the witness about a document——

Mr. ZOELLER. I was hoping she might be able to help——

Mr. McLAUGHLIN. There are millions of pages of documents out in the world, Counsel. I mean, I may or may not have seen this "M" Bates range before—the base designation and the number. I don't recall seeing that right now, and before we show a document to the witness it would sure be interesting to know what the party was that produced it.

Mr. ZOELLER. It would be, but in the meantime——

Mr. McLAUGHLIN. Did this come out of your database or files? Do you have the foggiest idea where this came from?

Mr. ZOELLER. I know it was part of the production.

Mr. McLAUGHLIN. The production from whom, Counsel?

Mr. ZOELLER. I don't know.

Mr. McLAUGHLIN. You don't know.

Mr. ZOELLER. Do you have any familiarity with this? Can you help the quiz question?

The WITNESS. Well, I can tell you that Lisa Berg was a scheduler for the Vice President—Steve Warner was in the policy office——

EXAMINATION BY MR. ZOELLER:

Question. I'm sorry, the specific question is, do you recognize the document at all, I mean the handwriting, the——

Answer. I can tell you it's not mine.

Question. Okay, that eliminates a lot of the questions, but——

The WITNESS. Actually, while we're waiting can I talk to him for a second outside?

Mr. ZOELLER. All right.

[Discussion off the record.]

Mr. ZOELLER. Okay, back on the record.

EXAMINATION BY MR. ZOELLER:

Question. So just to make it short, you don't know where this—whose writing this would be or have any help in terms of its source?

Answer. Well, it's not my handwriting, you know, in terms of the source—looking at it——

Question. It's not familiar?

Answer. Looking at it it looks like these are the kinds of note pads that we used, you know, in the White House on a regular basis.

Question. But otherwise it's not familiar?

Answer. No.

Mr. DOLD. It's a White House production.

Mr. ZOELLER. For no other reason than to clarify the record, we'll mark that Exhibit JO-6.

[O'Connor Deposition Exhibit No. JO-6 was marked for identification.]

Mr. McLAUGHLIN. I'm sorry, you're marking the note pad notes Exhibit No. 6.

Mr. ZOELLER. And I'm showing the witness and Counsel what's marked as M-33188.

EXAMINATION BY MR. ZOELLER:

Question. And I ask if you remember this specific document that's to you?

Answer. No.

Question. Do you know—what was the position of Mr. Mark, who was—

Answer. Let's see.

Question [continuing]. Author—

Answer. November 2, 1995, at the time he was an intern. He answered the phone in Mr. Ickes' office.

Question. Okay.

Would he have done this on a regular basis?

Answer. Did he answer the phone on a regular basis?

Question. Uh-huh.

Answer. I think, yeah, the interns in Mr. Ickes' office generally answered the phone on a regular basis.

Question. And did they produce logs of phone calls?

Answer. I don't really know how that system worked, but this e-mail looks like Eli took a bunch of calls for me.

Question. Okay.

Mr. NELSON. Did you say this is an e-mail?

The WITNESS. This is an e-mail. This document is a printout of an e-mail. That's not apparent, I guess, but it is. This is what our e-mails look like when they print it out.

Mr. ZOELLER. Okay.

EXAMINATION BY MR. ZOELLER:

Question. I'm referring to the 11:10 call. Who is Donald Dunn?

Answer. At the time he was I think the office manager for the Office of Political Affairs.

Question. And, if you can, do you recall this, making a return call, or does this note here under his name help you recollect anything about this conversation you may have had with him?

Answer. I don't remember the conversation at all. Reading it, my interpretation of it is that either Donald or I, and I can't tell which one had—I think Donald would be my interpretation—my interpretation is that Donald was saying that he had given to the social secretary the list of presidents and political directors from AFL-CIO affiliates in order for them to receive invitations to a Christmas party but that he did not have the list of senior staff from the AFL-CIO and he wanted me to tell him who they were so that he could invite them as well.

Question. Okay.

And then the reference to list to go to WhoDB, would that be the ones who were going to be invited? How would that process have worked?

Answer. I haven't the faintest idea.

Question. And this is not directly related to the WhoDB questions, but the next—who is Janno, if you know?

Answer. That refers to Janno Lieber, who is the Deputy Assistant Secretary for Policy at the Department of Transportation.

Question. And do you have any recollection of a fax that you sent her to the Teamsters regarding the Teamsters?

Answer. He's a him.

Question. Oh, I'm sorry.

Answer. And I don't recall the fax I sent to him on the Teamsters, but any fax about the Teamsters that I would have sent to the Department of Transportation would have been on a policy related matter, most likely involving truckers.

Question. Any political related matters?

Answer. Not that I would have dealt with the Department of Transportation on.

Question. Okay.

So if I understand, in terms of your knowledge of the WhoDB, who would you have asked to run a search on WhoDB?

Answer. I don't recall ever asking somebody to run a search on WhoDB. I think at some point I wanted to get a list of all of the labor leaders who had been to the White House at some point recently, and I think I went through a process of trying to figure out how to do that which eventually led me to the social secretary telling me I could get it out of WhoDB. But if my memory serves me correctly, I think I could never quite get the right password to work, and so I had to get the social secretary's office to do the printout for me. That's about what I remember.

Question. Well, that helps. In terms of providing names that you created for different events that you were tasked the responsibility for, was there a process that

you would hand that material to someone that you understood would then get it into the system, the WhoDB?

Answer. As I said before, I never focused on WhoDB as part of any process, so if I were putting together an event, I would get the list to the Social Secretary's Office or the Secret Service so they could do their vet, and what happened after that, somebody else took care of it and I never worried about it.

Question. Do you know of any other databases that you were familiar with in the White House?

Answer. No.

Question. What kind of system did you personally work with?

Answer. I don't think I maintained a database.

Mr. ZOELLER. Let's mark this Exhibit 7, JO-7, for the record.

[O'Connor Deposition Exhibit No. JO-7 was marked for identification.]

EXAMINATION BY MR. ZOELLER:

Question. I am showing the witness and counsel's memorandum for Mr. Ickes from the witness. The subject matter is Better America Foundation, EOP 042168. Are you familiar with this document?

Answer. Well, it seems I wrote it.

Question. Well, any recollection, let's put it that way?

Answer. I vaguely remember this, yes.

Question. Can you explain, was this done at the request of Mr. Ickes?

Answer. Yes.

Question. And do you recall a conversation, and what you were instructed to do?

Answer. I don't remember the conversation, and I don't remember what I was supposed to do.

Question. On the subject matter generally about PACs and not-for-profits, I guess, did you handle this issue generally, on, let's call it nonprofit organizations, political organizations—

Mr. McLAUGHLIN. Is there a specific issue?

Mr. ZOELLER. I am trying to find out generally, is this something you would be staffed with in the same respect that you might cover labor issues.

Mr. McLAUGHLIN. Meaning secret political action committees, shutting down and disclosing their donors; is that the issue?

Mr. ZOELLER. No, it is generally on the subject of not-for-profits.

Mr. McLAUGHLIN. Did she follow all not-for-profits is the question?

Mr. ZOELLER. No, did Mr. Ickes direct you to anything other than just this one?

Mr. McLAUGHLIN. Counsel, there are a lot of not-for-profits out there. Do you mean not-for-profits run by Members of Congress, by Republican Members of Congress? Do you mean political groups, under the guise of 501(c)(4) status, forced to shut down by public scrutiny? What is the issue?

Mr. ZOELLER. All of those.

EXAMINATION BY MR. ZOELLER:

Question. Were there others besides this one?

Answer. I think that this was an isolated matter that I worked on.

Question. Do you remember the response by Mr. Ickes to this memorandum?

Answer. I don't remember him responding at all. It doesn't ask for a response.

Question. Did you follow up on this at any point?

Answer. I don't think so.

Question. Are you aware whether a complaint was filed?

Answer. I am not aware of whether or not a complaint was filed. Now that I think back on this, I do remember the context. There was a Wall Street Journal article about this and he pulled it out of the paper and said can you tell me what this is about and that is what this is for.

Question. Okay. Well, that is what I was really asking was whether, in your mind, this was an isolated event?

Answer. It was.

Question. Or whether you covered an area that included not-for-profits.

Are you aware of any follow up, other than by Mr. Ickes on this subject? I mean, did you ever have any other conversations dealing with the Better America Foundation?

Mr. McLAUGHLIN. You said follow up other than, I think she testified there was no follow-up period.

EXAMINATION BY MR. ZOELLER:

Question. Did you have any conversations outside of Mr. Ickes about this subject?

Answer. I didn't, and just to anticipate the next set of questions, I don't know of anybody at the White House doing anything beyond me writing this memo on this particular topic.

Mr. ZOELLER. We will mark this as JO-8 for the record. I may be able to avoid a series of questions if I can ask you one preliminary. Would you have—

Mr. McLAUGHLIN. Did you.

[O'Connor Deposition Exhibit No. JO-8 was marked for identification.]

EXAMINATION BY MR. ZOELLER:

Question. All right. Do you have any recollection of preparing a memorandum for Mr. Ickes to Bobby Watson?

Answer. I don't have a specific recollection of doing it.

Question. Do you know what Mr. Watson did over at the DNC?

Answer. I know one of the things he did at some period of time is he was the Chief of Staff.

Question. Okay. Did you ever have any specific conversations or communications with him regarding labor?

Answer. Sure.

Question. Unions, that is where I was headed.

Answer. Okay.

Question. And this is CGRO 1743. That is a memorandum to Mr. Ickes from Bobby Watson. Is this at all familiar to you?

Answer. No.

Question. The subject matter is not?

Answer. No.

Question. Is it safe to say that you would not be in the normal communications unless it had some issue that you were directly involved with?

Answer. I'm sorry, what?

Mr. NELSON. Yes, I don't think she can understand that question.

EXAMINATION BY MR. ZOELLER:

Question. What other areas would you have dealt with Mr. Watson outside of labor?

Mr. McLAUGHLIN. Did you or would you? Are you asking a hypothetical.

EXAMINATION BY MR. ZOELLER:

Question. Did you?

Answer. It could have been miscellaneous topics because he was the Chief of Staff of the DNC so I don't remember anything specific. This memo isn't familiar and I don't think I ever had any conversations with him about this topic.

Question. This goes back to the earlier exhibit, but would you have any knowledge of Mr. Ickes involvement, if any, with other not-for-profits, such as, specifically, vote now '96, National Coalition for Black Voter Participation, Defeat 209?

Answer. I don't have any recollection with him, and any work or whatever, in doing it with any of those organizations.

Question. Would you have been involved in any of the issues related to not-for-profits, such as those, for Mr. Ickes.

Mr. NELSON. Well, I am a little unclear by what you mean by such as those. I think that implies some familiarity of the witness with what types of organizations those were, which maybe she has some familiarity with them, but I don't think that has been established.

Mr. ZOELLER. That's fair.

EXAMINATION BY MR. ZOELLER:

Question. Are you familiar with those at all?

Answer. Yes.

Question. And what is your knowledge of those organizations?

Mr. McLAUGHLIN. Are you asking regarding the tax status or their operations generally?

EXAMINATION BY MR. ZOELLER:

Question. Operations generally.

Answer. I guess I don't know what their operations generally are.

Mr. McLAUGHLIN. Furthermore, I am going to object unless you want to ask specific questions about coordination.

EXAMINATION BY MR. ZOELLER:

Question. Well, I will ask specifically whether you had any occasion to communicate with any of those three specific groups.

Answer. Not that I remember.

Mr. NELSON. Can you just give me the names of the groups again?

Mr. ZOELLER. Vote Now '96, National Coalition For Black Voter Participation, Defeat 209. Now, we can avoid a page or two.

The WITNESS. Great. Do you need this back?

EXAMINATION BY MR. ZOELLER:

Question. While I have this one in front of you, do you know who would have worked with Mr. Ickes—

Mr. McLAUGHLIN. Who did work with Mr. Ickes?

Mr. ZOELLER. Well, she said she didn't know about this specific document.

Mr. McLAUGHLIN. So you are asking a hypothetical question.

Mr. ZOELLER. I am asking if she has any specific knowledge of who handled the issues of State party, Federal money for Mr. Ickes.

Mr. McLAUGHLIN. I am going to object. That is not relevant to the scope of the committee's investigation. You are looking at a memo that even on its own terms relates to the spending of money, not the raising of money. Accordingly, even by the most tenuous tether, this document is not connected, not pertinent to the scope of the committee's investigation. Furthermore, I will note that it is dated October 4, 1994, well before the 1996 election campaign.

Mr. NELSON. I agree with the objection, but I am not going to instruct the witness not to answer.

The WITNESS. What is the question?

EXAMINATION BY MR. ZOELLER:

Question. Who would have been staffed to do this type of work?

Mr. NELSON. The question was do you have any specific knowledge of who handled the issue, who, if anyone, I think, handled the issue of State party Federal money for Mr. Ickes.

The WITNESS. I didn't even work for him in October of '94, so I have no idea.

EXAMINATION BY MR. ZOELLER:

Question. Well, just generally, I am trying to eliminate, you know, you are not doing a lot of the things for him.

Answer. I don't think anybody on the White House staff did, just to, you know—I think that this is a DNC document. My guess is the DNC would have been working on it.

Mr. McLAUGHLIN. Can I ask a clarifying question? Did he have somebody on his staff who worked full-time on DNC issues.

The WITNESS. No. Not even part-time on DNC issues. I mean, the closest that there came was me, which is sort of an occasional odd thing.

EXAMINATION BY MR. ZOELLER:

Question. That is actually quite helpful. So it is your recollection or understanding that there were no deputies or assistants?

Answer. Not unless there was a secret one, you know, hidden under the desk.

Mr. McLAUGHLIN. Be careful what you say. The next subpoena might come out.

Mr. NELSON. I assume the White House has looked under Mr. Ickes' desk to see if there is anyone hidden.

Mr. McLAUGHLIN. Do you want to mark this before you move on?

Mr. ZOELLER. I will mark this JO-9.

[O'Connor Deposition Exhibit No. JO-9 was marked for identification.]

EXAMINATION BY MR. ZOELLER:

Question. Since I was making reference to these groups, maybe I should, for clarification, put this in the record as well. But I trust from your earlier answers that you would have no knowledge as to anything of this subject matter regarding donations?

Answer. This is the first time I have seen this.

Question. Do you know Mr. Meddoff?

Answer. No.

Question. And don't remember any conversations regarding him?

Answer. No.

Mr. ZOELLER. We better mark that JO-10, just to clarify where the questions originated. Maybe I can skip quite a bit of this. You did say you were the closest thing that there came to it. What types of roles would you do for Mr. Ickes regarding political matters generally, just so I can skip sections that aren't relevant.

The WITNESS. Well, just, I mean, ad hoc sorts of things. All I kind of meant to say by that comment was, in my understanding of the way his staff worked, his immediate staff, there wasn't anybody on the staff tasked with DNC liaison. Whatever the things you would call the kinds of things you are asking about. As with the Better America Foundation memo, there were some ad hoc things related to the DNC that occasionally came up that he would hand to me, but, you know, there is no general way of characterizing it.

EXAMINATION BY MR. ZOELLER:

Question. Maybe that is my explanation for some ad hoc questions that come from different areas. How about on the subject of Emily's list, any familiarity with that in your specific duties with Mr. Ickes?

Answer. No.

Question. Moving right along. I am showing the witness what is Bates-stamped as EOP 036287. That is a memorandum from Martha Phipps to Ann Cahill. Have you had a chance to look at the document?

Answer. Yes.

Question. Do you have any particular knowledge about any of these items that are listed here?

Mr. McLAUGHLIN. Are you talking about any of these, like, for example, I am sure she must know something about White House Mess privileges.

Mr. ZOELLER. The memo generally talks about an aggressive goal of \$49 million, and it talks about coordinating activities in the White House and the DNC.

EXAMINATION BY MR. ZOELLER:

Question. So just as it relates to any knowledge that you might have regarding the coordination of activities between the White House and the DNC, and I can read each one off.

Answer. Well, if you could sort of give me a specific question related to each one.

Question. Okay. Did you have any knowledge of the coordination of DNC contributors getting seats on Air Force One or Two?

Answer. No.

Mr. McLAUGHLIN. Are you talking about any time from February, 1993, to the present? Are you talking about the May 5, '94, the date of the memo or some time later than that?

EXAMINATION BY MR. ZOELLER:

Question. You have never seen this memo before, I trust?

Answer. No.

Question. From your answers. Other than, let's rule out press information. In your capacity with Mr. Ickes, throughout that time period, were you aware of seats being provided at White House dinners for either DNC supporters—?

Answer. Maybe I can help. I haven't seen this memo before and I don't know, with regard to anything on here, whether because of Ms. Phipps' memo there were six seats at all White House private dinners, I don't know if any of these things ever came to pass. I mean, I certainly have general knowledge about what these items are. And the reason I say that is because in answer to your specific question, sure, I know that donors were invited to White House dinners, but I have no idea if it has anything to do with this memo or any kind of regular practice or anything.

Mr. McLAUGHLIN. Do you know anything about six seats being reserved?

The WITNESS. I don't know anything about six seats.

EXAMINATION BY MR. ZOELLER:

Question. Well, your earlier testimony, regarding your lack of involvement with specific donors, I think kind of helps clarify some of that, using a different example, though, of, let's say labor leaders you had worked with. What would have—did you ever get labor leaders on Air Force One?

Answer. Yes.

Question. And what would be the process that you would go through? Was there a system set up?

Answer. I would ask Mr. Ickes if he thought it was appropriate to put labor leader X on Air Force One and if he said, yes, I would check with the staff who coordinated the Air Force One manifest to see if there was space and I would invite the labor leader to take the ride

Question. Okay.

Answer. However, it was never because of contributions. It was because I thought there was some need for the President to have a conversation with the person and Air Force One was often a convenient place to have such conversations, particularly during the campaign period when he was on the plane almost all the time.

Question. And in the same respect, your involvement in setting up, if any, people to come to dinners, would always be in a similar fashion?

Answer. It was always political in the sense that it was because they were supporters, but it was my involvement with the labor leaders and any of these types of things, never had anything to do with a contribution from them.

Question. Would you have been made aware of contributions that people made that you had recommended?

Answer. I once tried for curiosity sake to find out the donors—specific labor donors from the DNC, and they weren't able to produce a list for me because of the way they kept their records.

Question. So you could even ask if somebody was a donor and you may not get a response?

Answer. I mean, yes, basically.

Question. Okay. Well, that is informative.

Answer. I mean, it was in, I think, early '95 when I asked, because I wasn't able to get a list. I don't think I ever tried again. The only other time I think I remember even seeing any list of labor leaders and donors was at some point during the convention. I think there was a list. It certainly wasn't something that had anything to do with day-to-day work.

Question. And in your capacity with Mr. Ickes, were you aware of some of the financial pressures, and I am seeing if you have any knowledge about that—during the midst of the campaign, and the President is off on campaign-related events, what would your role have been, if any, in working with Mr. Ickes in that capacity, that is obviously too broad, but do you have some role specifically or, again, is it just on an ad hoc basis?

Answer. Do you mean with regard to fund-raising?

Question. Yes.

Answer. I had no responsibilities with regard to fund-raising.

Question. Well, that clears up a lot. And, generally, on this subject, do you have any knowledge about these types of activities, generally called perks, and political fund-raisers?

Mr. NELSON. You mean a link between perks and donors?

Mr. ZOELLER. Anything that would be relevant to that line of questions.

The WITNESS. I don't think so.

EXAMINATION BY MR. ZOELLER:

Question. There has been several inquiries lately in the press about the vetting—not the vetting, but the screening process of people coming to the White House. When you produced a list of people that were going to meet inside the White House, what is your understanding of the process of screening? Did you have to send lists of names to anyone specifically?

Answer. To the Secret Service.

Question. Okay. And how did that system work, at least from your perspective?

Answer. I would send the list to the Secret Service and they would let me know if there was a problem with anybody on the list.

Question. Do you have any specific memory of people being denied?

Answer. I don't remember anybody ever being denied.

Question. In terms of providing background material on the people you had a role in helping to invite, would you produce this for Mr. Ickes only or were there other people that you would, let's leave it strictly on the labor issue. When you produced a list of people attending the White House, would you send that directly to Mr. Ickes or was it generally cc'd to a larger group?

Answer. Well, it would go to anybody who needed to know that they were coming, so if it were a social event, the Social Secretary would go, would get a copy of it. If the President was meeting with them, of course, there would be a memo to him telling him who was going to be there. It would basically depend on who was going to be in the meeting. Basically, anybody who was going to meet with them or be in a reception with them or not, I would let them know who was going to be there.

Question. Did you ever have any involvement in a national security issue that required you to communicate with the CIA or NSC? Some people have a hard time remembering that, but if you had contacted the CIA or NSC regarding that—

Mr. NELSON. Any issue at all.

Mr. ZOELLER. Yes, I will leave it generally.

Mr. McLAUGHLIN. I object on the grounds that that is just the blindest fishing that I have ever encountered and the premise of your question is in error because I think the testimony before the Senate was that the CIA agent in question was undercover when Mr. Fowler contacted him, but that notwithstanding, your question still stands, so I will renew my objections to it on the grounds that unless you have particular issues that are some how relevant and pertinent to the scope of this committee's investigation, I think you should withdraw the question and stick to relevant facts within the witness' personal knowledge.

Mr. NELSON. Well, I also have a problem with the relevancy of a question that is phrased as broadly as you did ever; have contact with anyone in the NSC or the CIA on any national security issue because it clearly sweeps in all kinds of things that couldn't possibly be within the scope of this investigation.

Mr. McLAUGHLIN. Let me raise one other—

Mr. NELSON. Let me talk to the witness on that question.

Mr. McLAUGHLIN. Before you do that, let me also state for the record, as counsel is well aware, we have a procedure with the NSC to conduct interviews rather than depositions for precisely the reason that you don't want sensitive national security information to be leaked out through a deposition. So I strongly suggest you tailor your question more narrowly and forget about the issues. Maybe talk about individuals or particular contacts or something like that, but as you well know, the reason we have reached an accommodation with the White House to conduct interviews, rather than depositions, is so we don't get into areas where national security is needlessly splattered across the pages of the deposition, which could end up on the Internet.

So why don't you reconsider your question or else take it up with the higher ups as to whether you want to risk violating an agreement with the White House, that these are exactly the kinds of matters that should be handled through an interview, rather than a deposition.

Mr. NELSON. And on reflecting further about it, I guess I am inclined to think that I will just instruct the witness not to answer that question as framed. I really don't see, I mean, number one, it is on its face irrelevant. Number 2, even limited to a yes-or-no answer, I am not really sure that I can say with assurance that that piece of information alone wouldn't possibly cause somebody some harm, unanticipated though it might be here. And, you know, further, it doesn't do you any good unless you follow up and the follow-ups, I think, would just be impossible.

Mr. ZOELLER. I understand. If she has, then I would have to be very delicate about any follow-up questions, but it would avoid a whole topic of, I think, me asking specific questions might not be something we want really on the record either.

Mr. McLAUGHLIN. I don't know why you want any of this on the record, Counsel. I will, once again, invoke my famous Supreme Court decisions of *Watson* and *Deutch* and ask you to state for the record the logical chain which ties the question that you have asked to the scope of the investigation.

The WITNESS. I am just going to take his advice and not answer it.

Mr. McLAUGHLIN. Okay.

Mr. ZOELLER. Okay.

EXAMINATION BY MR. ZOELLER:

Question. Do you have any knowledge of recommendations by anyone that particular labor leaders not be allowed to meet with the President or the Vice President?

Answer. Do you mean on a given day or in a specific situation or people being sort of generally barred?

Question. Generally barred?

Answer. I don't have any knowledge of any labor leader being generally barred from meeting the President or the Vice President.

Question. Do you have any knowledge of labor leaders being denied access to the White House?

Answer. Do you mean like coming to the gate and they can't get in?

Question. Or in any way being refused entrance or access to a meeting?

Mr. McLAUGHLIN. By the CIA, by particular—

The WITNESS. I mean, I can think of occasions where somebody has come to the gate and he was not cleared in and so the Secret Service won't let you in if you are not cleared in.

EXAMINATION BY MR. ZOELLER:

Question. But any other screening process that denied access?

Answer. No, I can't think of one.

Question. Were you tasked by Mr. Ickes or anyone else to work on the pipeline issue of Mr. Tamraz?

Answer. No.

Question. Any specific knowledge of the issue?

Answer. No.

Mr. McLAUGHLIN. I will note for the record, to the extent the question implies there was any credible evidence that Mr. Ickes had anything to do with the Tamraz issue, I would object, I am aware of no such information.

EXAMINATION BY MR. ZOELLER:

Question. Are you aware of his involvement in the Tamraz pipeline issue at all?

Answer. Well, actually, let me say, I don't know what the Tamraz pipeline issue is.

Question. That helps.

Answer. But to the extent I have read a little bit about Mr. Tamraz in the paper, I have no knowledge Mr. Ickes ever knew of him, met with him, heard of him, anything to do with these issues ever.

Mr. NELSON. We have been going for more than an hour and a half. Can we take a couple minutes because I need to make a phone call to tell somebody I am not going to be present at a meeting?

Mr. ZOELLER. We will go off the record then.

[Recess.]

Mr. NELSON. Back on the record. Greg, can we look at the stack of exhibits again? Something in one of your later questions, it is the page of handwritten notes.

The WITNESS. The page of handwritten notes on the spiral notebook. What occurs to me, from your later question, is that this top line here, looks like I must have—when I couldn't figure out how to get into the WhoDB, it looks like I asked an intern or somebody on my staff to try and figure it out and it looks like that person wrote down a note about trying to figure it out. Frank was an intern, and Donald is probably Donald Dunn.

EXAMINATION BY MR. ZOELLER:

Question. Called Donald?

Answer. Yes.

Question. Okay. I think I will come another way at this awkward question. I think I brought up the subject of Roger Tamraz, so in order to see whether you were specifically tasked an ad hoc project that might relate to any of a series of individuals, how about if I say their name. And if you were tasked an assignment by Mr. Ickes that would have dealt with these people, if you could just say what your role was.

Answer. Okay.

Question. James Riady?

Answer. No. My no meaning I was not tasked to do anything that related to him, as far as I know.

Question. Okay. And by tasked, it is not a specific—I mean, I am looking for specific, but if you were asked to prepare materials or in some way, shape, or form, were involved in the issues raised.

Answer. Okay.

Question. Do you know James Riady?

Answer. No.

Question. Yogesh Gandhi?

Answer. Never heard of him.

Question. Georgi Croninberg?

Answer. Never heard of him, or her, as the case may be.

Question. Eric Hotunc?

Answer. No.

Question. Howard Glicken?

Answer. No.

Question. Johnnie Chung?

Answer. No.

Question. Are you familiar with who he is, other than the press reports?

Answer. Not other than the press reports.

Question. That skips a lot of questions.

Mr. McLAUGHLIN. It is not to imply these people have done anything wrong either.

Mr. NELSON. Or even that they even exist.

Mr. McLAUGHLIN. Do you want to mark this before we move on?

Mr. ZOELLER. That is 10, and 11 is Martha Phipps.

[O'Connor Deposition Exhibits No. JO-10 and JO-11 were marked for identification.]

EXAMINATION BY MR. ZOELLER:

Question. The same question regarding Pauline Kanchanalak?

Answer. The question being did I ever work on anything related to her?

Question. Yes.

Answer. Not as far as I know.

Question. Charlie Trie?

Answer. Not as far as I know.

Mr. McLAUGHLIN. Asked and answered.

EXAMINATION BY MR. ZOELLER:

Question. Okay. Did you ever work with Ernst & Young in preparation of any reports dealing with fund-raising practices?

Answer. That doesn't ring any bells.

Question. Were you ever tasked any responsibility for any checks that were returned by the DNC?

Answer. No.

Question. Would you have any knowledge about the—

Mr. McLAUGHLIN. Do you have or would you?

EXAMINATION BY MR. ZOELLER:

Question. At the time, did you have any knowledge of any passes, hard passes, White House hard passes being issued to DNC staff?

Answer. No, I don't think so. Not that I can remember.

Question. Did you ever work with any interns who were paid by the DNC?

Mr. NELSON. That was asked and answered.

Mr. ZOELLER. I think I asked if they were in her office.

EXAMINATION BY MR. ZOELLER:

Question. Were you aware of any?

Answer. I don't know. I guess I didn't know the DNC paid any interns and if they did, I am not sure I would have had any way of knowing that a given person was a DNC intern.

Question. Okay.

Answer. So it is entirely possible I worked with them, without knowing that is what they were.

Question. Were you tasked any responsibility that dealt with the issue of the President's Legal Defense Trust?

Answer. I don't think so.

Question. Were you aware of any donations by labor officials or labor unions to the Presidential Defense Trust.

Mr. McLAUGHLIN. I believe you are referring to the Presidential Legal Expense Trust, not the defense trust. I don't believe there is anything such as a defense trust. There is the Presidential Legal Expense Trust.

Mr. ZOELLER. That is right.

The WITNESS. I can't recall ever having any knowledge about a labor contribution to the legal defense fund, whatever it is called.

EXAMINATION BY MR. ZOELLER:

Question. Do you know Mike Cardozo?

Answer. No, I do not.

Question. Frank Cowan?

Answer. I know Frank.

Mr. McLAUGHLIN. What is the last name?

Mr. ZOELLER. Frank Cowan.

I am showing the witness CGRO 2555, a memorandum to Mike Cardozo from Harold Ickes.

EXAMINATION BY MR. ZOELLER:

Question. Are you familiar at all with the subject matter of this?

Answer. Well, I am familiar with Mr. McEntee, his union, Mr. Cowan, the legal fund. I didn't write the memo.

Question. Did you have any conversations with either—any of the people mentioned here or Mr. Ickes regarding the issue?

Answer. Not about this \$4,000.

Question. And not about the legal fund generally?

Answer. I don't think so. I mean, it's possible that at some point, if Mr. Cowan was trying to get money to it, he might have asked me who to get it to. That wouldn't be atypical, but I don't remember that happening.

Mr. ZOELLER. We will mark this exhibit JO-12 for the record.

[O'Connor Deposition Exhibit No. JO-12 was marked for identification.]

EXAMINATION BY MR. ZOELLER:

Question. Do you have any recollection of anyone else asking you how you would go about making a contribution to the Presidential Legal Expense Trust?

Answer. I don't remember anybody asking.

Question. All right. Thank you. Do you know Martin Davis?

Answer. No.

Question. Did you ever have any communication regarding Martin Davis?

Answer. Ever, with anyone?

Question. I will say, specifically, with Mr. Ickes, did he ever bring up the name?

Answer. No.

Question. Are you familiar with who he is, other than through the press, or is it just through the press?

Answer. I am familiar with who he is, other than through the press.

Question. And how do you know of him?

Answer. I am not exactly sure, but, I mean, he is a Democratic consultant, I believe, and I am generally familiar with who he is.

Question. In terms of your familiarity with consultants, were you ever tasked to work with the consultants at all—

Mr. McLAUGHLIN. Objection.

Mr. ZOELLER. By Mr. Ickes.

Mr. McLAUGHLIN. I object, because working with consultants doesn't in any way implicate campaign fund-raising improprieties or violations of law, accordingly. It is beyond the scope of this investigation. Fascinating historical perspective, I am sure, but not relevant to the investigation.

The WITNESS. Oh, and it is fascinating. Let me tell you.

Mr. NELSON. And I guess I am not sure of the scope of the question. When you say asked to work with the consultants, do you have in mind some defined body.

The WITNESS. Which one, why don't you state that.

Mr. McLAUGHLIN. I will note again it is now 3:05. We have been plodding at a fairly slow pace.

Mr. ZOELLER. I thought we were going pretty fast.

Mr. McLAUGHLIN. Now we are going into inquiries of Democratic political strategy and the operations of that strategy within the White House. Fascinating, but irrelevant, Counsel.

EXAMINATION BY MR. ZOELLER:

Question. Are you aware of the political strategies? I didn't realize that was in your bailiwick?

Answer. What political strategies.

Mr. McLAUGHLIN. What I am suggesting is that by probing into interactions with consultants as part of an overall operation of political strategy, your staff has assured us over and over again that you do not intend this investigation to be an inquiry into the political strategy that carried the President to his dramatic reelection victory.

Now, I am suggesting to you, the witness is not, I am suggesting to you that you are probing into political strategy and violation of the assurances. You are free to go down this road, if you like. I think the taxpayers will be fascinated to learn, once the investigation is over, their money was used to probe the way in which the media consultants helped to secure that victory for the President.

Mr. ZOELLER. Let me go back.

EXAMINATION BY MR. ZOELLER:

Question. Did you ever work with any consultants?

Answer. What does "work with" mean?

Mr. McLAUGHLIN. Who are the consultants?

The WITNESS. And what consultants are you talking about?

Mr. ZOELLER. We will start with your being tasked to work with labor leaders.

Mr. McLAUGHLIN. Objection. Asked and answered.

The WITNESS. What is the question?

Mr. ZOELLER. I don't know that I quite got it out, but we will go back to, you know, your being tasked or asked by Mr. Ickes to handle labor issues, just on that subject.

EXAMINATION BY MR. ZOELLER:

Question. Did you ever work with consultants involved in the '96 campaigns, who were hired by labor organizations?

Answer. What does "work with" mean?

Question. Well, we will say in the communications, either written or oral, where you are communicating requests by Mr. Ickes or in some capacity, working with them, I mean, I am looking to see, not the labor leader specifically, I am looking at people hired.

Answer. Is your question did I ever speak with somebody hired by the unions?

Question. Well, let's—in the areas of either fund-raising, which is the main brunt of the investigation, or in the production of commercials, those are the two specific areas that I am talking about.

Answer. I don't know of any particular union or the AFLUs to make commercials, and therefore, don't know if I worked in any capacity with those people, and I don't know if they had a consultant for fund-raising, so if they did, I don't know if I worked with that person either.

Question. Are you familiar with the Share Group?

Answer. Yes.

Question. And would you have had any communications with the Share Group, as a staff member for Mr. Ickes?

Answer. No.

Question. Are you aware of any communications between Mr. Ickes and the Share Group?

Answer. No.

Question. In the consultants I was trying to do it a little more broadly, but I will go through the specifics. Phone banking operations, did you ever communicate with people hired to do phone banking?

Mr. NELSON. In the 1996 campaign.

Mr. ZOELLER. Yes.

The WITNESS. People hired to do phone banking, for the re-elect?

EXAMINATION BY MR. ZOELLER:

Question. Well, for labor organizations?

Answer. I don't think so. I mean, if I did, I didn't know that is what the person was doing, you know.

Question. How about did you ever, I use the term "work with." I'm specifically looking for work you did at the request of Mr. Ickes with the President of the Laborers International Union of North America.

Mr. McLAUGHLIN. Objection as to relevance.

The WITNESS. You are asking about Mr. Coia, and what are you asking about him?

Mr. McLAUGHLIN. Let me put my objection on the record before you go. My objection is essentially as to form. She has testified that she worked on all kinds of labor issues. You are now asking her if she worked in any way with a President of a major union. Fascinating, I'm sure, but maybe you want to tie it into something conceivably relevant, like asking her whether she in any way coordinated or transferred communications concerning the coordination of expenditures by the labor unions on issue ads with the re-elect, the White House or the DNC. Beyond that, you have moved into irrelevant territory.

Mr. ZOELLER. That was too broad a question.

Mr. NELSON. I actually don't remember what your question was.

Mr. ZOELLER. Well, she did know Mr. Coia, and that is where I was headed.

The WITNESS. If your question is do I know him, yes. The answer is, yes.

EXAMINATION BY MR. ZOELLER:

Question. And did you have any tasks assigned by Mr. Ickes dealing with him or his union?

Mr. McLAUGHLIN. Objection.

The WITNESS. Well, I mean, yes, but if you want to ask about campaign-related things, I didn't have anything to do with him and the campaign. Like all other labor union Presidents, since I was the labor liaison for the White House, I, of course, worked with him.

EXAMINATION BY MR. ZOELLER:

Question. So that is—I'm looking for specifically related to campaign issues.

Answer. I did not work with him on anything related to the campaign.

Question. And the same question, you know, as it relates to other unions, I understand your substantive role. Was there any political role you served with that I can shortcut some of the questions?

Mr. McLAUGHLIN. I think her job is essentially political.

The WITNESS. My job was political.

EXAMINATION BY MR. ZOELLER:

Question. I understand, but in terms of fund-raising, we will specifically focus on—

Answer. If your question is did I ever ask any of them for money, no.

Question. Okay.

Answer. Did I ever tell them we wanted a certain amount from them for any purpose, no.

Question. Were you aware of any conversations between Mr. Ickes and unions on either of those two subjects?

Answer. No.

Question. Did union officials ever call specifically asking where funds should be sent?

Answer. They didn't call me asking where funds should be sent.

Question. Okay. Are you aware of them calling anyone in the White House, asking where—and I am not just asking generally, but specifically, whether there was—do you have any knowledge of donations which were coordinated through someone in the White House, so that is where all this is headed?

Mr. NELSON. Well, which question do you want answered, the one any knowledge of any coordination of contributions by anyone in the White House?

Mr. ZOELLER. We will start there.

The WITNESS. I don't know of anybody in the White House coordinating any labor contributions.

EXAMINATION BY MR. ZOELLER:

Question. Any other contributions?

Answer. I don't know of anybody in the White House coordinating contributions.

Question. Do you have any knowledge about the—well, let me back up. Were you tasked specific issues regarding either Mr. Coia or the Laborers International for Mr. Ickes? Did he ever task you a project regarding that?

Mr. McLAUGHLIN. I object. To the extent you are going beyond campaign fund-raising, your question is not pertinent.

The WITNESS. I think I answered that, actually.

Mr. NELSON. She said she spoke to Coia and she worked with him regarding issues not related to the campaign, and not related to fund-raising, so I guess what you are asking is either asked or answered, or else you are seeking further information on something that by definition is not relevant.

Mr. ZOELLER. Well, no, I am looking to see whether there was a project in a similar fashion that she was tasked to work on, an Indian affairs, a Native American affairs issue, whether there was ever a time when Mr. Ickes said take this project and produce something.

Mr. McLAUGHLIN. Counsel, I object. This is the worst kind of fishing. Why don't you ask her about specific issues and specific tasks that she may have been assigned, Counsel, and let me finish my objection before you interrupt. You are now asking a question as broad as did you ever work on any particular projects at the direction of Mr. Ickes with regard to the Laborers International Union of North America. That seems to me to be the most egregious kind of fishing.

Why don't you focus in on particular areas that might be relevant to some subject matter of this committee's legitimate inquiry. Otherwise, asking a broad, expansive question like that strikes me as highly offensive.

Mr. ZOELLER. I understand it is broad, but I am trying to be broad so I will know to skip the next three pages.

Mr. McLAUGHLIN. You are trying to be broad because you are trying to fish into areas. Let me finish my statement. You are asking a broad question because you are trying to fish into areas that are beyond this committee's jurisdiction. You appear to have some kind of prurient interest in the labor movement broadly.

I suggest to you that you confine your questions to campaign fund-raising and I will withdraw any and all objections that I have been raising to your questions. When you insist upon ranging beyond these areas, I am forced to reiterate my objections. Why don't you ask a disciplined, tight-focused question, designed to get at personal knowledge that might be held by this witness, instead of simply flimflaming around with these questions, wasting everybody's time. It is now 3:15. We have been going since 10 o'clock with a 1-hour break for lunch.

You could have done all the subjects and the documents you have covered in approximately 2 hours. I am most unhappy that on 2 days prior to the hearings, we are sitting here combing through vague, mushy questions that fish around for information so far beyond the scope of this committee's investigation that I am, frankly, embarrassed on behalf of the Minority to be a part of this. That is my statement and I urge you to confine your questioning to subject matters that may fall within the scope of the committee's investigation.

The WITNESS. Could I take a second with my counsel outside?

Mr. ZOELLER. Please.

[Recess.]

Mr. ZOELLER. We will go back on the record. Was there a question pending—

Mr. NELSON. Yes.

The WITNESS. I don't know.

Mr. ZOELLER [continuing]. That we broke for?

Mr. NELSON. The question pending was—I can tell you the substance of it, and you will probably, I think, accept my phrasing of what your question was.

Were you tasked by Mr. Ickes with any specific projects with regard to Mr. Coia or the Laborers Union?

And I share, for the reasons that I already stated and Minority counsel stated, the objection that that is beyond the scope of this committee's inquiry. I will let her answer that on a yes or no basis, but beyond that, I am not—without prejudging questions that haven't been asked, I really don't know how much further we will be able to go down that road. But I will let the witness answer the question.

The WITNESS. The answer would be yes.

EXAMINATION BY MR. ZOELLER:

Question. Okay. I guess I won't skip that page then. Do you have—is there a specific problem, I take it, regarding something more than just a yes? Could you explain what the project was that you were tasked with?

Mr. NELSON. That's—

Mr. McLAUGHLIN. I will renew my objection that you are now shamelessly fishing for information that is not within the scope of this committee's investigation. Why don't you ask her if she worked on any projects related to campaign fund-raising? Simply fishing around for whatever it is that she worked with a labor leader and a labor union on is an embarrassment to this committee's effort.

Mr. NELSON. I will also explain what the problem is and why I will direct her not to answer that question.

Mr. ZOELLER. That would be very good.

Mr. NELSON. Number one, she has already told you that she didn't work with Mr. Coia or this union on matters related to the campaign or fund-raising. So, by definition, I think whatever she did work with them on is outside the scope of the subject matter of this inquiry.

My understanding is that matters that she worked on that relate to the subject of this union and this union official are matters of White House policy and that any discussion of their specifics would be revealing information that may be subject to privileges held by the White House and/or the President that Ms. O'Connor is not in a position either to claim or waive.

And given that fact that you are getting into matters that are, one, irrelevant; two, substantive policy matters; and, three, possibly subject to executive branch privileges that we can't here address without direction from the White House, I am advising her not to answer that question.

Mr. ZOELLER. Okay. If I understand counsel's objection and you can assure me that this either has no relevance to the '96 campaign or would lead to answers which might be relevant to the '96 campaign, then I will withdraw the question.

Mr. NELSON. Well, the '96 campaign itself is a lot broader than the scope of this committee's inquiry, and I am not sure that I can say what may or may not be relevant to the '96 campaign.

I suppose one could argue that all matters of White House policy are relevant to the '96 campaign insofar as some people may disagree with White House policy, some people may agree with it, and that may affect their attitudes toward the President in the '96 campaign.

But I think Ms. O'Connor has already stated under oath that the matters did not relate to—specifically to the campaign or to fund-raising.

Mr. McLAUGHLIN. Now, I just want to pitch in that counsel's ridiculous question is telling in that the 1996 campaign in its entirety is not within the scope of this committee's investigation. This committee is investigating possible campaign fund-raising improprieties and possible violations of law. Whether or not those are read, as they ought to be, in the conjunctive or, as the Republican majority has taken the position, in the disjunctive, it still seems to me that your questions have no bearing whatsoever on that scope.

So perhaps you would like to, again, discipline your comments and restrict yourself to ascertaining whether the objection is as counsel stated, or perhaps there is something else underlying it.

I think that counsel's objection is clear for the record. The record speaks for itself. I don't know what you would hope to probe into.

The witness' testimony is quite clear that the projects that she worked on relating to LIUNA, Laborers International Union of North America—that the matters that she worked on relative to Laborers International were not related to the campaign or campaign fund-raising.

Beyond that, I will challenge you, pursuant to your duties under Deutch and Watkins, to state for the record the logical chain which connects any other projects that she worked on relevant to LIUNA and/or Arthur Coia to the questions that—the question—to the scope of the investigation.

Will you meet that obligation?

Mr. ZOELLER. Well, I trust, you know, that her counsel has reviewed her potential answers and can assure me that they won't lead to that. Is that what I take from—

Mr. McLAUGHLIN. That they won't lead? Counsel, the witness' counsel's job is not to tell you what her answers will or will not lead to.

Mr. ZOELLER. No. He is instructing her not to answer the question.

Mr. McLAUGHLIN. Counsel's job is to tell you whether or not her answer potentially implicates White House privileges and whether or not it is or is not pertinent to the scope of the investigation.

He has told you his view on that, and that is the basis, as I understand it, for his instruction. For you to try and get him to make representations other than that seems to me to be—to border on professional misconduct. I would urge you to—I would urge you to simply move on.

Mr. ZOELLER. Let me just—for the record, are you stating your objection is based on relevancy or executive privilege of the White House? Which?

Mr. McLAUGHLIN. Or other privileges.

Mr. NELSON. I am not stating any objection that any answer that she may or may not give is executive privilege because, as I have said, I think, previously in this deposition at least three times, neither Ms. O'Connor nor I can claim it, nor can we waive it. But if there is a possible privilege, she is under a duty not to divulge any information that could be subject to it.

Now, I think that there is a clear relevance objection, to begin with, that could probably dispose of the matter altogether, but when that's coupled with the fact that the question delves into the formulation of White House policy and nobody is here from the White House to instruct us on the White House's view of the degree to which that is or is not privileged or the degree to which the White House is or is not willing to waive any privileges that may attach, I cannot permit the witness to answer that question.

Mr. ZOELLER. I think that's a clear objection.

Mr. NELSON. I do understand that in these depositions there has been a process in which, when matters like this come up—

Mr. ZOELLER. There have been—

Mr. NELSON [continuing]. There can be consultations with the White House Counsel's Office to ascertain their views. If you want to avail yourself of that, that's something that we could discuss.

Mr. McLAUGHLIN. But I will tell you, before we get to this issue of executive or other privileges held by the White House, why don't you state for the record the relevance of your question, the pertinence of your question to the scope of the investigation?

If you are unable, as I predict you will be, to do that, then perhaps we can move on to other questions without treading into this far more sensitive ground which, as your former chief counsel had committed to do, we are all trying to avoid in order to avoid the institutional conflicts that necessarily come along with questions such as the one you posed.

So why don't you attempt to formulate a logical chain of pertinence, and then we can figure out whether or not we need to tread into this other territory.

Mr. ZOELLER. Well, just for the sake of trying to help counsel, there have been a number of contributions made by this union particularly which are within the scope, and a lot of the issues that are raised by—

Mr. McLAUGHLIN. And they are within the scope because they were either illegal or improper?

Mr. ZOELLER. I didn't say that.

Mr. McLAUGHLIN. Then they are not in the scope. Either you believe that the contributions have some element or quality to them which would make them either improper or illegal or they are not, in which case, they are not within the scope of the investigation. So which quality of those contributions do you believe is improper or illegal?

Mr. ZOELLER. Well, without going into, you know, the specific, there are other investigations into some of these same groups, and I understand that there might be a privilege if she is working with White House counsel.

Mr. McLAUGHLIN. No, that's not the—that's not the scope of the privilege, Counsel. The privilege extends much beyond that. I will refer you to the D.C. Circuit's recent opinion clarifying the scope and range of the executive privilege. Perhaps you should familiarize yourself with the law before you make representations as to it.

Mr. ZOELLER. As long as I know that executive privilege is being raised—

Mr. McLAUGHLIN. Counsel, that is not what—that is not what has been stated. What I am urging you to do is to state the relevance of the objection. You have been unable to point me to any quality or characteristic of LIUNA contributions.

Furthermore, she has stated that any work she did at the direction of Mr. Ickes was not related to fund-raising or, in fact, to campaign activities in 1996.

You are going to have to come up with some way in which other projects could conceivably be relevant to the scope of this investigation. Otherwise, you, sir, are fishing, and you are doing so shamelessly.

Mr. ZOELLER. I am not fishing. She has produced materials for Mr. Ickes regarding the labor union during the campaign. I have at least established that portion of it.

Mr. NELSON. I am not sure that you established that portion of it.

EXAMINATION BY MR. ZOELLER:

Question. When was this? Maybe that would be a relevant question.

Mr. McLAUGHLIN. Counsel, any—Counsel, you have not established the relevancy of these materials.

Mr. ZOELLER. I understand your objection. I certainly appreciate it, but you know and I don't.

Mr. McLAUGHLIN. Counsel, you have not satisfied my objection, which is as to pertinence. You have declined, up until this point, to state any logical chain which ties a broad question about projects related to LIUNA and/or Arthur Coia that have nothing to do with fund-raising or the '96 campaign to the scope of the investigation. You have declined to do so. You have been unable to do so. I urge you to do so on the record now, and I will withdraw my objection. I will be delighted to withdraw my objection. Otherwise, you cannot characterize what you are doing in any way other than fishing.

Mr. ZOELLER. Okay. So do I take it—

Mr. McLAUGHLIN. Counsel, you are now turning to the witness. Are you going to answer my objection or not?

Mr. ZOELLER. I am not being deposed here.

Mr. McLAUGHLIN. No, Counsel, but you have an obligation—

Mr. ZOELLER. You stated your objection over and over again.

Mr. McLAUGHLIN. Counsel, you have an obligation under United States against Deutch and United States against Watson, two McCarthy era cases—not much good came out of the McCarthy era, but one thing that did come out of it is the requirement that congressional investigative committees be able to state for the record the

pertinence of the questions that they are posing to witnesses to the scope of the investigation. I strongly urge you to live up to your obligations under those cases and state the relevance of these questions.

You have been unable to do so and, frankly, I would suggest, unwilling to do so because there is no relevance to the scope of this investigation.

Look yourself in the mirror, sir. It is wrong to ask these kinds of questions without any kind of relevant basis, any kind of relevant connection to the scope of the investigation.

And I will note for the record that counsel has declined to fulfill that obligation and to state any relevance to the scope of the investigation.

Mr. ZOELLER. I would be willing if the witness' counsel will assure me that there is no relevance, and I would ask that.

Mr. McLAUGHLIN. Counsel, again, you seem to—you now are asking a question and placing the burden on the witness to state whether or not it is relevant. Your obligation is to state whether or not the question is relevant. You have not done so. You should be embarrassed, Counsel.

Mr. ZOELLER. I have asked a question. She has answered. She says that she has—she has produced materials on this labor union.

Mr. NELSON. The question was whether she was tasked to undertake any specific project. That was the question that was asked. That was what the answer, yes, was to.

Mr. ZOELLER. And I said that I would be perfectly willing to take the counsel's—her counsel's assurance, not Minority counsel but her counsel's assurance, that in no way leads to relevant questions regarding the '96 campaign.

Mr. McLAUGHLIN. That is a preposterous proposition, Counsel.

Mr. ZOELLER. I am not asking you, though.

Mr. McLAUGHLIN. I am making a record.

Mr. ZOELLER. If you want to assure me that it will not lend itself, which is the requirement of the scope—please, if you would, let me ask this question.

Mr. McLAUGHLIN. I will let you finish asking the question, and then I will make my statement.

Mr. ZOELLER. If you can assure me that it will not lend itself to an answer that would be within the scope of this investigation, then I will withdraw the question.

Mr. NELSON. When you say "within the scope of this investigation," you said before related to the 1996 campaign. Do you regard anything related to the 1996 campaign as being within the scope of this investigation?

Mr. ZOELLER. Yes.

Mr. McLAUGHLIN. That is a fascinating concession, Counsel.

Mr. ZOELLER. I think if she wants to tell you that it has anything to do with—

Mr. NELSON. I don't think it is possible for anyone to give an assurance that anything done by the White House on a substantive policy issue could not be said by someone to have some relevance to the 1996 campaign.

Mr. ZOELLER. Well, we have eliminated certain things, that it is not about fund-raising, and I think that's—

Mr. NELSON. If you want to eliminate some other things, maybe we could ask some questions along those lines.

Mr. ZOELLER. Okay.

Mr. McLAUGHLIN. There we go. There is a perfectly legitimate compromise, Counsel. You can ask about specific subject matters which are relevant to this investigation.

Mr. ZOELLER. Thank you.

EXAMINATION BY MR. ZOELLER:

Question. In the—is there any one project or more, if I can ask that?

Mr. NELSON. You can answer that.

The WITNESS. More than one.

EXAMINATION BY MR. ZOELLER:

Question. Okay. In any of these—how many? I don't want to characterize it as one or two if it is many.

Answer. I don't remember the number.

Question. Okay. More than one or two?

Answer. Yes.

Question. In these—I see the problem now. Were you ever tasked anything that dealt with coordination of the union's activities with either the DNC, Clinton-Gore, or State parties?

Mr. NELSON. Tasked by Mr. Ickes?

Mr. ZOELLER. Yes.

The WITNESS. You mean beyond fund-raising?

EXAMINATION BY MR. ZOELLER:

Question. Yes, beyond fund-raising, in coordinating the activities of the union with the DNC.

Answer. I think yes.

Question. And is that relevant? I am sorry. Am I on relevant grounds now? Can I just ask what they are?

Mr. NELSON. I don't know that they are relevant.

Mr. ZOELLER. I am within the scope at least.

Mr. NELSON. I don't even know about that. You may be within the area that I am not going to direct her not to answer.

Mr. ZOELLER. Maybe that might help.

Mr. NELSON. But let me make sure that I have the question. It was coordinating activities between the union and the campaign?

Mr. ZOELLER. Uh-huh.

Mr. NELSON. Or the DNC?

Mr. ZOELLER. Yes, or State parties.

Mr. NELSON. Well, with that—and the answer to that was yes. With that focus, I would like to consult with the witness again.

Mr. ZOELLER. Certainly. We will go off the record for a second.

[Recess.]

Mr. NELSON. Why don't you proceed, Mr. Zoeller.

Mr. ZOELLER. Thank you. Was there a question pending?

Mr. NELSON. I don't think so. I think that—well, maybe I am wrong. I thought that there was a question that she answered, which was whether she was ever tasked with coordinating activities between union and campaign, DNC or State parties, the answer to which was yes.

EXAMINATION BY MR. ZOELLER:

Question. And I am asking, what was that project that you were tasked?

Answer. Well, it wasn't a project, because I was the all-purpose labor liaison. The tasks related to communicating with the DNC and the campaign, the reelect campaign, on labor-related matters fell to me generally.

Question. These labor-related matters were all substantive?

Answer. No, they weren't. Where they involved the campaign and the DNC, they were political.

Question. Just for the record, just so it doesn't read so one sided, I think the Minority counsel has asked a number of times kind of alluding to the fishing. But on page 4 of the report, it says that—

Mr. McLAUGHLIN. Of which report, Counsel?

Mr. ZOELLER. Of our report providing special investigative authority.

Mr. McLAUGHLIN. Our report?

Mr. ZOELLER. Majority with Minority and dissenting views.

Mr. McLAUGHLIN. The Rules Committee report or the report of this committee?

Mr. ZOELLER. The Rules Committee.

Mr. McLAUGHLIN. Thank you, Counsel.

Mr. ZOELLER. Okay. But I will point out for the record—

Mr. McLAUGHLIN. So you are now going to be stating the Rules Committee's view as to the scope of this investigation?

Mr. ZOELLER. On page 4, it says the circumstances surrounding Mr. Ickes' campaign-related activities and fund-raising role at the White House and the DNC, knowledge of any wrongdoing or improprieties, as well as the role of other White House officials and DNC employees in campaign-related activities or fund-raising, and/or any misappropriation of Federal funds.

I only read that into the record to give some basis for why your answer that you did work on political issues for Mr. Ickes during the campaign would be within the scope.

Mr. McLAUGHLIN. So I will note for the record that what you have just read strongly supports the view that I have been urging since we sat—since we started launching into this line of questions, that as soon as she stated that none of the projects that she worked on were related to fund-raising or the 1996 campaign effort, that ends the relevance—that ends the line of questioning, because anything beyond that, any other projects, goes beyond what you just read.

Mr. NELSON. If I could just clarify, I think there may have been some statements about characterizations of her prior testimony that may have—may have gotten a little muddled.

The statement that she did not undertake projects related to the campaign, I think, dealt specifically with a question about Mr. Coia, and she now, of course, has said that with respect to the unions, she did, you know, take tasks related to the campaign.

My problem with your prior question that led to a lot of colloquy was, you asked her to identify the subject of any project that she had undertaken with respect to these unions, and that question comprised both substantive matters and campaign-related matters.

Now that we are focused on campaign-related matters, while I think there is still an issue about the scope, and I am not sure that there is agreement—certainly the Minority counsel doesn't agree, and I don't think I do either—that anything relating to the campaign is necessarily within the scope of this committee's inquiry.

Mr. ZOELLER. I will agree with that. I will agree with that statement.

Mr. NELSON. I am not directing her not to answer questions on this line regarding her role with respect to communications between DNC and the campaign on labor matters.

Mr. ZOELLER. Okay.

Mr. McLAUGHLIN. Counsel, I would urge you to ask tight, focused questions targeted to bring out information relevant to this investigation, and I will stop haranguing you with my objections.

Mr. ZOELLER. I am glad, for the record, that you admit to haranguing me with your objections.

Mr. McLAUGHLIN. I will harangue you as much as necessary to make a clear record as to the outrageous conduct of the person taking this deposition.

Mr. ZOELLER. Okay. If we can get back to the question, is it already on the table?

Mr. NELSON. I don't think there is a question on the table—

The WITNESS. I don't think so.

Mr. NELSON [continuing]. Right now. I am afraid there has been a little colloquy without a question. But go ahead.

Mr. ZOELLER. Originally there was some confusion, because I had no idea that there was potentially a series of these, and some may be within, some may be outside, the scope.

Is that a fair characterization, that there may be some within the scope?

Mr. NELSON. Well, to the extent that the scope includes matters relating to coordination of activities with respect to labor matters, the campaign, and DNC, I think she has said that she did engage in activities falling within that description.

Mr. ZOELLER. I think that's fair enough.

Mr. NELSON. And that's where we are going now.

Mr. ZOELLER. That's fair enough.

EXAMINATION BY MR. ZOELLER:

Question. And what were those activities?

Answer. They encompassed anything necessary to facilitate the coordination of the reelect campaign and the DNC and the White House related to labor.

Question. Did this go beyond substantive matters?

Answer. It generally did not involve substantive matters. They may have come up occasionally.

Question. So not being substantive, were they political?

Answer. They were political, largely.

Question. And what were the political issues raised?

Answer. Well, that's what I meant by saying it was broad coordination of the activities of the reelect campaign, the DNC, and the White House involving labor.

Do you want me to give you an example?

Question. If you would.

Answer. An example would be, it's campaign time, and, therefore, any time the President goes to a labor union convention, it's considered a political activity, and, therefore, a labor union having a convention during September, for instance, would potentially call me and say, "We want to invite the President."

I would have to make a recommendation to the President's schedulers as to whether or not he ought to go, but I would want to do that in conjunction with the campaign staff and the DNC staff, because they might have opinions on that matter. So I would coordinate with them.

Question. Okay.

Answer. Many, many different types of things of that nature, essentially.

Question. So essentially, since it is during the reelect and you handled those issues, that they became more political?

Answer. Yes.

Question. I understand.

In any of the issues, did you deal with the finance aspect of contributions from labor organizations being directed to any other campaigns?

Answer. No. Well, let me clarify that. I don't know what "deal with" means. I didn't direct anybody to do it. I believe the DNC, you know, had a program of—I don't know what I know. I mean, I don't know what the DNC was doing. But my general understanding is, to the extent that money was trying to be directed to, for instance, congressional campaigns or something, it would have been in the purview of the DNC, you know, so I didn't do it.

But so—I don't know what "deal" means to you.

Question. Well, in your being tasked by Mr. Ickes, did he ask you to work with—we will make it broader—but labor unions in directing donations to specific campaigns?

Answer. No, he never tasked me to do anything like that.

Question. Were you aware of it, generally?

Mr. NELSON. Aware of what?

EXAMINATION BY MR. ZOELLER:

Question. Were you aware of this being done by Mr. Ickes?

Answer. No, I am not aware of that being done by Mr. Ickes.

Question. Okay. So if I understand correctly, your role was not a specific task by Mr. Ickes but a general role dealing with the labor unions during this period?

Answer. Yes.

Question. Okay. What other types of materials or what other subject matters, specific subject matters that would deal with campaign finance at all, if anything?

Answer. Campaign finance meaning fund-raising?

Question. Fund-raising or directing of contributions or any of the subject matter of the finance of campaigns.

Answer. When you say "finance," you mean the incoming, not the expenditures?

Question. Well, I will distinguish if you know something about the income, that's the fund-raising aspect, but on the spending, I am looking for anything you may know about the coordination of the expenditures.

Mr. McLAUGHLIN. You have lost—I don't know if there is a verb in there somewhere. You have lost me on what the question is.

Mr. ZOELLER. I will just leave it with the fund-raising side of it.

The WITNESS. What is the question?

Mr. McLAUGHLIN. What is the question?

Mr. NELSON. I am lost, too, I am afraid.

EXAMINATION BY MR. ZOELLER:

Question. Okay. You said you weren't tasked with any specific projects, but I am now into the general. Your role for Mr. Ickes in dealing with labor unions—

Answer. Uh-huh.

Question [continuing]. Was there any—I mean, did Mr. Ickes, to your knowledge, have any communications with the labor unions about their fund-raising efforts?

Answer. I am relatively certain that if he met with them on any given occasion, he would probably thank them for their support. I am relatively certain he would never ask them for money.

Question. Okay. Do you have any knowledge that he ever asked them to contribute to any other campaigns beyond—

Answer. I don't have any knowledge of him ever asking them to contribute to either the Clinton-Gore campaign or the DNC or any other campaign, and I would seriously doubt that he did, because it's just not very likely.

Mr. ZOELLER. Okay. Can we take just a minute for me to reacclimate myself?

Mr. McLAUGHLIN. Can we go off the record?

Mr. ZOELLER. Yes, we will go off the record now.

[Recess.]

Mr. ZOELLER. Okay. We will go back on the record now.

EXAMINATION BY MR. ZOELLER:

Question. Do you have any knowledge of a meeting by Mr. Coia in the White House during late '95 or throughout '96?

Answer. Yes.

Question. And what was the subject of the meeting?

Mr. McLAUGHLIN. I am going to object as to relevance. I don't see that Mr. Coia falls within the scope of the investigation.

Mr. NELSON. Do you want to confer on this?

The WITNESS. Yes.

Mr. McLAUGHLIN. Let's go off the record for a moment.

Mr. ZOELLER. We will be off the record.

[Discussion off the record.]

Mr. NELSON. Are we back on the record?

Mr. ZOELLER. Yes, we will go back on the record.

Would you like the question repeated?

The WITNESS. Yes.

Mr. ZOELLER. Could the reporter please read the question back?

[The reporter read back as requested.]

The WITNESS. I think it was just a general meeting with supporters. They were all labor leaders. And I think the President and Vice President each talked about some of their, you know, sort of substantive goals related—that they thought these guys would care about and thanked them for, you know, support in general over the past years, and each of them went around the table and said a couple of words.

I think some of them raised substantive issues and others of them just, you know, expressed a general interest in being supportive and working closely with the White House.

EXAMINATION BY MR. ZOELLER:

Question. Was there any—either at this meeting or in other communications, do you know whether Mr. Coia asked for the White House to become involved in any specific issues for him?

Answer. Yes, he did.

Question. And what did he ask that the White House do?

Answer. Well, that's the same question that we were on before, which is the one where I can't assert or waive the privilege.

Question. Okay.

Answer. It is substantive issues.

Mr. NELSON. But with respect to what issues Mr. Coia raised?

The WITNESS. Are you talking about what he raised at—raised at this meeting or in general? I was taking him to mean not at this meeting. Are you talking about at this meeting?

EXAMINATION BY MR. ZOELLER:

Question. It sounds like at this meeting, if I understand, that there is a group of labor leaders and he is just one of them?

Answer. Yes.

Question. Were there any specific meetings with just Mr. Coia and people from his union?

Mr. NELSON. In the White House.

The WITNESS. Not that I remember.

EXAMINATION BY MR. ZOELLER:

Question. Okay. Did he raise specific subjects outside of a meeting, either directly to you or to Mr. Ickes, and ask for White House help in an issue?

Answer. Yes.

Question. And was this once or several times or—

Answer. I think more than once.

Question. Did he ever ask for assistance in contacting the Department of Justice?

Answer. That's not ringing a bell.

Question. Okay. Do you remember the general time frame of his request for assistance from the White House?

Answer. During the entire period that I was working on labor issues. He, like many, many labor union leaders, would call up with this or that substantive issue, and he was not unlike all the rest of them. Often, it wasn't him personally, it would be a staff member, and sometimes, you know—well, basically it was often a staff member and not him personally.

Question. Were any of the issues related to political activities on behalf of the union? I will say campaign activities rather than—I mean, they are all political in some sense, but campaign-specific activities?

Answer. The only—well, the only thing that I could think of that would possibly fall in the scope of that question would be, I think, there might have been an occasion or two where somebody on his staff would call and, you know, ask if one of

their local union leaders in a particular State could be in a receiving line at a campaign event.

Question. But no issues regarding expenditures of the union funds for campaign activities?

Answer. No.

Question. Okay. Thank you.

Did you ever arrange or have knowledge of meetings between Mr. Coia and Mr. Ickes during this period?

Answer. I don't remember any, actually. I mean, if they occurred, there is a very high degree of probability I arranged them, but I actually don't remember Mr. Ickes meeting with Mr. Coia during this period.

Question. Would there be other communication other than meetings between the two?

Answer. Well, there could have been a phone call or something.

Question. But I mean that you have personal knowledge of.

Answer. I don't remember. I don't remember them talking or having a meeting. It doesn't mean that it didn't happen, I suppose, but I don't remember it.

Question. Okay. So just, again, back to the general, you have no knowledge or information regarding Mr. Ickes' work—I don't want to say work with—communications with the union in directing funds from the union into campaigns during the '96 election?

Answer. I don't know anything about that at all, if it occurred.

Mr. ZOELLER. All right. All right. Thank you.

Mr. NELSON. Just as a matter of clarification, I think, from her answers, that when the witness was answering your questions about meetings between Mr. Coia and Mr. Ickes, she was excluding from the answer to that meeting that she referred to before that involved other union presidents and other administration officials as well.

Mr. ZOELLER. I believe I understood the one larger group.

Mr. NELSON. I thought you probably understood it, but, you know, sometimes the understanding of people in the room may be different from an understanding when somebody goes back and reads the cold record.

The WITNESS. Also, he was probably in for other larger meetings, too. I mean, we had receptions for the AFL-CIO. I am sure he was invited. I don't know if he came. I am not talking about those kinds of things either.

EXAMINATION BY MR. ZOELLER:

Question. Okay. And this has more or less been asked and answered, but let me make sure just for the record that you have no knowledge of anyone in the White House working with this union regarding coordination of funds being raised and where these funds should be sent.

Answer. No, I have no knowledge of that at all.

Question. Okay. Did you have a similar—I think you mentioned that you had general labor issues. In regards to any meetings with Ron Carey, are you aware of any meetings between Ron Carey and the White House during the election?

Answer. No.

Question. Did Mr. Carey—

Answer. And let me just say I just don't remember.

Question. Okay.

Answer. I can't say for sure they never happened.

Question. Did you ever meet with Mr. Carey—

Answer. I don't think I saw him there during that period of time.

Question. Did you ever meet with Mr. Carey during the '96 election?

Answer. Not in a small group of any sort. I mean, again he might have been in large groups of—

Question. Did he or a member of his, let's call it, immediate staff, ever contact you regarding issues that he wanted to bring to the White House's attention?

Answer. Sure.

Question. Were any of these issues political in nature dealing with fund-raising activities?

Answer. No.

Question. Were any of the communications regarding the expenditure of Teamsters' funds?

Answer. Not that I remember.

Question. Are you aware of any meetings that took place between Mr. Ickes and Mr. Carey during this period?

Answer. I don't remember seeing Mr. Carey in the White House.

Question. On trips or outside?

Answer. Well, I didn't travel with Mr. Ickes, so if they met outside the White House I wouldn't know it.

Question. Did Mr. Ickes ever tell you that he had a meeting or any communications with Mr. Carey or his campaign staff?

Answer. Not that I remember.

Mr. NELSON. Mr. Carey's campaign staff?

Mr. ZOELLER. That's right.

Mr. NELSON. Meaning his Teamsters' election campaign staff.

EXAMINATION BY MR. ZOELLER:

Question. Did you have any communication with the Teamsters—not Teamsters but Mr. Carey's collection staff—his campaign staff?

Answer. Well, not that I know of, but I guess—I don't know what the positions were that all of his staff had, so I don't think so. I think all the people I spoke with on his behalf were people who were on the Teamsters' union staff. If they switched at some point, then I don't know it, and I may have been talking with them without knowing it.

Question. So you had no conversations with people on his campaign regarding his campaign?

Answer. Not as far as I know.

Mr. NELSON. And, again, we're talking about Mr. Carey's own campaign to be President of the Teamsters?

Mr. ZOELLER. That's correct.

EXAMINATION BY MR. ZOELLER:

Question. Were you aware of any communication with Mr. Ickes and members of Mr. Carey's election, his campaign staff?

Answer. Again, I don't know who is on the campaign staff so my answer has to be I guess not that I'm aware of.

Question. Do you have any information regarding Mr. Ickes' involvement in Mr. Carey's campaign, if any?

Answer. I don't know anything about him being involved in Mr. Carey's campaign, if he was. He was kind of busy with other things, though, so I sort of doubt it.

Question. Do you have any information about campaign contributors for Mr. Carey's election?

Answer. No—well, the answer is no.

Question. Thank you.

Do you know who Bill Hamilton is?

Answer. Yes.

Question. And did you—how do you know Mr. Hamilton?

Answer. I worked with him.

Question. In what capacity?

Answer. In my capacity as the labor liaison, he was the person I spoke to most often at the Teamsters.

Question. Had you known him prior to this?

Answer. No.

Question. And do you know of any communication between Mr. Hamilton and Mr. Ickes?

Answer. Not specifically.

Question. Were there any meetings set up that you're aware of or—

Answer. I'm sure—yeah, I'm sure there probably were, but I can't think of any specific with him.

Question. Again, this gets back to your knowledge of Mr. Hamilton's role in campaign fund-raising.

Answer. I don't know anything about his role in campaign fund-raising.

Question. Okay.

During this period, did you communication with any people involved in the DRIVEPAC?

Answer. I don't know what the DRIVEPAC is.

Question. That answers the question.

Do you know Jack Palladino?

Mr. McLAUGHLIN. Objection to relevance. Particularly irrelevant in light of the fact Mr. Leach has retracted the statements about Jack Palladino.

Mr. ZOELLER. It was a yes or no question, I'm sorry.

Mr. McLAUGHLIN. And I doubt if you have any evidence that would otherwise make Mr. Palladino relevant, so I would challenge you to state for the record the relevance of questions regarding Mr. Palladino.

Mr. ZOELLER. It's a yes/no question—

Mr. McLAUGHLIN. Is Counsel declining to state for the record the relevance of the question?

Mr. ZOELLER. I am.

Mr. McLAUGHLIN. Counsel is declining to state for the record the relevance of this question.

The WITNESS. I don't know.

Mr. ZOELLER. Thank you.

EXAMINATION BY MR. ZOELLER:

Question. I think you testified you didn't know Martin Davis?

Answer. I don't know Martin Davis.

Question. Okay, that scratches all of that.

Mr. McLAUGHLIN. Asked and answered.

EXAMINATION BY MR. ZOELLER:

Question. Are you aware of any commitments by the DNC to support Mr. Carey's campaign?

Answer. No.

Question. Did you work with Richard Sullivan in arranging meetings with labor officials?

Answer. Between labor officials and who?

Question. And Richard Sullivan or—

Answer. No.

Question. Mr. Fowler?

Answer. No.

Mr. NELSON. I'm sorry, the witness may have known what that question was, but I don't. Mr. Fowler what?

Mr. ZOELLER. Whether she helped arrange any meetings with Mr. Fowler and Mr. Carey's campaign.

The WITNESS. I did not.

EXAMINATION BY MR. ZOELLER:

Question. Were you aware of any communications between Mr. Ickes and specific donors to the Carey campaign?

Answer. Well, I don't know who the donors to the Carey campaign were so I can't tell you if I know that Mr. Ickes communicated with them.

Question. Okay.

So you would have no knowledge of who the donors are so whether they met or not would not be something you would know?

Answer. Correct.

Question. Okay.

I think I asked generally about labor unions' contributions to campaigns, so questions regarding AFL-CIO, you would have no knowledge as to their contributions, specific targeted contributions?

Answer. You're asking me if I know of any contributions they made to specific campaigns?

Question. Yes.

Answer. No.

Question. Were you aware of any goals or projected donations of labor organizations to campaigns?

Answer. I think at some point I did have some sense of that. I can't remember what it was.

Question. But this would not have been some area that you were tasked with by Mr. Ickes to—

Answer. Well, the reason I would have had some general knowledge was because of the sort of role that I told you earlier I was playing as sort of the coordinator of the labor person on the campaign staff, the labor person on DNC staff and myself, and I think because of that I sort of generally knew that there were goals, contributions from the labor movement to various campaigns, but I think at the time I may have had a sense of what the goals were, but I don't remember what it was, and I wasn't myself tasked with or in any way related to trying to get them to meet their commitments or tracking their commitments or anything like that.

Question. Okay. That's where I was headed, thank you.

Did you prepare any materials for Mr. Ickes regarding the campaign contributions of labor organizations?

Answer. I don't remember.

Question. Would that have been one of the things that—would have looked to you to do?

Mr. NELSON. I object to the form of the question. It's hypothetical.

EXAMINATION BY MR. ZOELLER:

Question. You have no memory of producing materials for Mr. Ickes regarding fund-raising activities by the unions?

Answer. By that, you mean their projections for what they would raise and spend on different campaigns?

I don't remember tracking that for him or writing a memo to him describing it.

Question. Okay.

In your role in the liaison—is that a correct term—did you ever have occasion to contact the Department of Labor regarding specific issues raised by labor unions?

Answer. Yes.

Question. Okay.

Were you ever asked specifically on areas that dealt with Mr. Carey's campaign to contact the Labor Department?

Answer. On his campaign, or do you mean on the election?

Question. The Teamsters' election.

Answer. On the Teamsters' election, yes.

Mr. McLAUGHLIN. Can you clarify "on his campaign"?

The WITNESS. But not his campaign.

EXAMINATION BY MR. ZOELLER:

Question. Can you tell me what the issue was that you—

Answer. Well, the issue was the Federal Government through the Department of Labor and Department of Justice funded the Teamsters' election, and every time the appropriations bills for those two agencies came up there would be a question as to whether or not Members of Congress would vote in the funding, and the Teamsters' union, not Mr. Carey's campaign, would call. I think in two succeeding years they did it twice to say, please make sure the funding is still in there for our election, and call the Department of Labor and Department of Justice and make sure they were still pressing for that line in their appropriations bills.

Question. Okay.

Mr. ZOELLER. I believe that's all the questions I have.

The WITNESS. Great.

Mr. NELSON. I guess we're proceeding in rounds.

Does the Minority counsel—

Mr. McLAUGHLIN. Well, I will—I have a very brief line of questions. And I'll try to speak up. Just make a face at me if I—let me just start by thanking you for coming in and providing forthcoming testimony to this committee's questions.

I just wanted to note that it's now 4:30, you have been here for about 6-1/2 hours, less a 1-hour lunch. That is substantially longer than certain—more senior officials with greater involvement and knowledge about the actual subject matters of this committee's investigation, and I will simply say that I wish I could tell you that this deposition was unique in its lack of focus, its lack of discipline, and its lack of clarity but I cannot, it's not unique.

Let me just ask you a couple of substantive questions, and then I have a couple of questions that Mr. Condit has asked us to ask.

Mr. NELSON. If I could just interrupt for a moment. Can you lend me two sheets of paper? I seem to have run out.

Mr. McLAUGHLIN. I can do more than that if you need it.

The WITNESS. You didn't know it would go this long, either. Thought it would be a one-pad day.

Mr. McLAUGHLIN. So you can make faces if you want paper, and you can make faces at me if I'm talking too softly.

EXAMINATION BY MR. McLAUGHLIN

Question. Let me turn quickly to the issue of Penn & Schoen and Squier Knapp. So I just want to ask you sort of the ultimate questions on that subject and that subject matter.

When you received the Penn & Schoen and Squier Knapp bills, reviewed them and then notified entities that the bills were okay to be paid, did you notify anybody other than Clinton/Gore and the DNC?

Answer. No.

Question. In other words—

Answer. Well, probably Mr. Ickes. I will tell Mr. Ickes, Clinton/Gore, and the DNC.

Question. I'm just trying to get at who actually would pay for the bills that you revealed, and I understand to your knowledge that you don't know what happened after the call stating the bills were okayed to be paid, but in other words you didn't forward them to some kind of secret slush fund to be paid; did you?

Answer. No, not at all.

Question. So you didn't forward them to any labor unions to be paid?

Answer. No.

Question. You didn't forward them to any independent expenditure groups to be paid?

Answer. No.

Question. You only forwarded them to Clinton/Gore and/or the DNC depending on what the proper breakdown was?

Answer. Yes. Actually to be totally clear, I didn't have to forward them because they had copies of them as well. I would just call and say you can go ahead and pay this bill now.

Question. So the bill that would be sent to you was a copy of the bill that also had been sent to Clinton/Gore and/or to the DNC?

Answer. Yes.

Question. Okay.

Let me turn, then, and ask you some ultimate questions on the Hudson matter. There were three calls that you were asked about, one your call to Interior, the second, your conversation rather than the call with Mr. Ickes, and the third is a later subsequent call for Mr. Fowler. Let's take those one at a time.

First, when you spoke to Mr. Ickes and he asked you to do a status check on the status of the Hudson matter, did he indicate to you that you should indicate to Interior what the proper result would be?

Answer. No, he asked me to find out the status.

Question. So he didn't suggest to you that you should urge Interior to come out one way or the other?

Answer. No, not at all.

Question. Okay. When you did talk to your contact at the Department of Interior whose name I now forget—

Answer. Heather Sibbison.

Question. When you spoke to Miss Sibbison, did you indicate which way the decision should go?

Answer. No, I made a particular point of stating, beginning of my conversation, that I did not want to influence anything at the department and I also didn't want her to tell me anything that was inappropriate for me to know.

Question. Okay.

Did you apply any pressure to come out one way or the other?

Answer. No, I did everything I could to make clear that was not what I wanted to do.

Question. Okay.

When Mr. Fowler contacted you in his subsequent call, I believe you testified that he asked you for the status of the matter. Did he indicate to you which way he thought the matter should come up?

Answer. No, I believe he asked me for the status of it as well.

Question. Did he urge you to urge anybody else as to which way the matter should come out?

Answer. No, I think he might have expressed some desire for the issue to be resolved quickly, but he didn't press me, and as far as I know he didn't press anybody else to resolve it one way or the other.

Question. And then let me finally turn to the matter, Presidential Legal Expense Trust. Did you ever solicit contributions for the Presidential Legal Expense Trust from anybody?

Answer. No, I didn't ever solicit contributions for anything from anybody.

Question. For anything from anybody?

Answer. Right.

Question. To the best of your knowledge, did Mr. Ickes ever solicit contributions from anybody—

Mr. NELSON. Well, you're asking her if she knows whether he ever—

Mr. McLAUGHLIN. To the—that's a fair objection.

EXAMINATION BY MR. MCLAUGHLIN:

Question. Are you aware of Mr. Ickes' soliciting contributions from anybody for the legal defense trust during the time you were working in his office?

Answer. I'm not aware of him ever soliciting contributions for any of the entities we were talking about ever.

Question. All right.

Let me just ask you a couple of questions that Mr. Condit has asked we ask all witnesses to establish some sort of record as to this investigation.

Have you given a deposition before the Senate?

Answer. Not yet.

Question. For this committee.

Have you incurred expenses in responding to this committee's request for deposition documents or any other kind of testimony?

Mr. NELSON. Well, I'm going to advise the witness not to respond to the extent the request might go to any arrangements that concern her retaining of counsel.

Mr. MCLAUGHLIN. Actually, I'm just looking for a yes or no answer as to whether you incurred any expenses in responding to the committee's request?

Answer. Yes.

Question. And has this committee offered to reimburse you for those expenses?

Answer. No.

Question. Let me ask you one final question. Has preparing for this deposition required you to take time away from your other work responsibilities?

Answer. Yes.

Question. Has it been a substantial amount of time?

Answer. Well, even just today was—essentially a full workday.

Question. I just want to note again for the record before we go off that I just asked my questions in approximately 7 minutes. Otherwise, we would have been going for about 5-1/2 hours, and in my view that is about 4 hours too long, even generously accounting for the subjects that might legitimately be covered by the deposition.

Thank you again for coming.

EXAMINATION BY MR. ZOELLER:

Question. Just one follow-up to—on the question of the bills to Penn & Schoen, it was my understanding that you had no knowledge of who paid for them?

Answer. Well, my knowledge was that I told the campaign or the DNC to pay them. You know.

Mr. NELSON. I didn't hear her just testify that she did have knowledge.

Mr. MCLAUGHLIN. I think I avoided that area in my questioning.

Mr. ZOELLER. Okay, but I wanted to make it clear that—

The WITNESS. I never saw the canceled checks or anything like that if that's what you're asking.

EXAMINATION BY MR. ZOELLER:

Question. Do you know who had final—

Answer. Actually, I did see wired lists so I'm fairly certain the DNC was paying them, but, you know.

Question. Who would you have called to say it was okay to pay?

Mr. MCLAUGHLIN. Asked and answered. You can ask again if you want.

The WITNESS. The lawyers and the controllers at each organization.

EXAMINATION BY MR. ZOELLER:

Question. And when the Minority said kind of the ultimate question, I guess that I thought I understood, who had ultimate decision over to pay or not pay?

Answer. What do you mean?

Question. These bills, who had the final say?

Answer. I guess I don't know.

Question. Are there more than one who—you reviewed them?

Answer. Right.

Question. And who else did you discuss them with besides Mr. Ickes?

Answer. Just Mr. Ickes.

Question. Okay.

So he would say yes or no to the payment of them? Of these bills?

Answer. Uh-huh, not generally on a case-by-case basis but—

Question. And to your knowledge did he have—

Answer. We basically would have sort of an understanding that if they met a certain amount of criteria that I didn't have to talk to him about—

Question. But if there were questions raised, you would bring them to his attention?

Answer. Yes.

Question. And what was your understanding with—did he have the final say in whether they were approved or not?

Answer. Well, the reason I hesitated in answering the questions is that I don't know that it was just him. For instance, if he thought that based on his concerns the bills could be paid, and I think his largest concern was that the expenditures be for something the President had actually authorized and not for something that was out of the scope of what they were supposed to be charging for, but if those two things were satisfied and he said it was okay to pay and yet a lawyer or controller from one of the organizations then had a problem with paying, I don't know that that person wouldn't also be able to stop the payment process with his or her concerns.

So I can't say that Mr. Ickes had in that sense the only veto authority over payment of a bill. I think that the campaign organization and the DNC may also have been able to raise concerns if they saw them with the bills.

Question. Okay, and in terms of the President's authorization of the expenditures, how was that communicated?

Answer. I believe Mr. Ickes had conversations with him, but I wasn't present for them so I cannot really testify of any direct knowledge about that.

Question. Okay. I think that answers it. Thank you.

Mr. McLAUGHLIN. I have nothing further.

[Whereupon, at 4:45 p.m., the deposition was concluded.]

[The exhibits referred to follow:]

THE PRESIDENT HAS SEEN
8-5-96

96 AUG 12 P 1:23

2 August 1996

MEMORANDUM TO THE PRESIDENT
THE VICE PRESIDENT

CC: Leon Panetta
 Evelyn Lieberman
 Maggie Williams
 Ron Klain
 Doug Sosnik
 Karen Hancox
 Peter Knight
 Terry McAuliffe
 Laura Hartigan
 Chairman Dodd
 Chairman Fowler
 B.J. Thornberry
 Marvin Rosen
 Scott Pastrick
 Richard Sullivan
 Brad Marshall

From: Harold Ickes *HI*

Re: DNC budget/fundraising meeting of 1 August 1996

At the weekly DNC budget/fundraising meeting on 1 August it was concluded that if the DNC is to be able to spend the \$128 million budgeted for calendar 1996 (January - October), approximately \$31 million of "federal" dollars must be raised from major donors between now and the end of October. This assumes that the gross receipts from direct mail will only be \$25 million rather than the original anticipated \$30 million.

To date, \$15 million in federal monies have been raised by major donors since the first of the year and another \$15 million gross has been raised by direct mail (all of which is federal). Since 55¢ (on the average) of the \$128 million must be federal money, a total \$71 million in federal money must be raised if \$128 million is to be spent.

Since only \$15 million federal dollars have been raised from major donors for the period January through the end of July, it seems to be an almost impossible task to raise an additional \$31 million in federal money from major donors between now and the

CGRO-0660
Req. 2/3/97

end of October. If that amount of money cannot be raised, total overall spending of the DNC will have to be substantially reduced.

(millions)

71 - total "federal" needed (55¢ x \$128 million)
~~- 15~~ - major donor federal deposited as of 7/31
 56 - subtotal
~~- 15~~ - gross direct mail deposited as of 7/31 (all federal)
 41 - subtotal
~~- 10~~ - additional gross direct mail expected by 10/31
 31 - federal to be raised from major donor between 8/1
 and 10/31 if DNC is to be able to spend full \$128
 million.

Much of whether or not the \$31 million federal from major donors can be raised depends upon the success of the birthday party in August. Marvin Rosen, however, is very concerned that if there are not sufficient fundraising events scheduled in October (which will be extraordinarily difficult to schedule given the probable 3 week debate schedule in early October and the press of campaigning for the remainder of October), it will be, in his words, "very difficult" to raise all of the \$31 million federal needed from major donors. It is estimated at this point that there is a deficit of approximately \$8 million in federal dollars, that is, projected total of federal dollars from major donors from scheduled events between now and the end of October, is \$23 million -- \$8 million below the \$31 million needed to permit the \$128 million to be spent.

CGRO-0661
 Req. 2/3/97

THE PRESIDENT HAS SE:
5/7/96DEMOCRATIC NATIONAL COMMITTEE
PRESIDENTIAL COFFEEDate: Tuesday, May 7, 1996
Location: The White House
The Map Room

Time: 9:00 a.m.

I. PURPOSE

The purpose of this coffee is to raise funds for the Democratic National Committee.

II. BACKGROUND

This group has been pulled together by Shelby Bryan. Chairman Fowler met with Shelby and Stan McLeland in February and discussed Shelby's hope of getting this group together. They are all new contributors to the DNC.

III. PARTICIPANTS

Please see attached list.

IV. PRESS PLAN

This event will be closed to the press.

V. SEQUENCE OF EVENTS

- Call Time. Chairman Fowler arrives and guest will be seated at table for coffee.

• PROGRAM

- POTUS arrives
- Chairman Fowler delivers brief remarks.
- POTUS delivers informal remarks.
- Departure after the program.

VI. REMARKS

Informal

J.EOP 024245



THE WHITE HOUSE
WASHINGTON

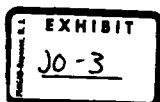
MEMORANDUM TO DOUG SOSNIK
KITTY HIGGINS
JACK QUINN ✓
ALEXIS HERMAN
BRUCE LINDSEY
JOHN HILLEY
MARCIA HALE
DON BAER

From: JS Marsha Scott
Date: March 6, 1996

Subject: Follow-up to Presidential Luncheons & Coffees

As you know the President is holding a series of lunches and coffees over the next several months. He has asked that I develop a plan for following up on the issues that are raised during these events. When an issue arises that is normally handled by you or your staff, I will make sure that you know about it. In order to facilitate his request, I will send a copy of notes from each event. Please let me know how you want to track those issues that fall within your jurisdiction. If you have any questions, please feel free to call me at [REDACTED]

EOP 036161



26 June 1996

MEMORANDUM TO CHAIRMAN DODD
 CHAIRMAN FOWLER
 B.J. THORNBERRY
 BRAD MARSHALL

CC: Doug Sosnik
 Karen Hancock
 Jennifer O'Connor

From: Harold Ickes @

Re: Bills for Squier/Knapp and Penn and Schoen

Until further notice, I request that you hold payments on all bills of any kind (other than for time buys) owed to Squier/Knapp and to Penn and Schoen until they have clarified a number of questions and have provided adequate documentation regarding outstanding bills they have submitted. In my view they are not adhering to the rules regarding expenses and other matters.

In addition, although in the past you have permitted Squier/Knapp to pay their travel related and other expense bills out of excess time buy which they hold, henceforth, I urge that this practice be stopped immediately.

*They only expenses ever paid for out
 of excess time buy was production
costs - never travel-related or other
 expense bills.*

CGRO-10924
 Req. 5/28/97





United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MEMORANDUM

To: Jennifer O'Connor, White House Office of Political Affairs

From: *MS* Heather Sibbison, Department of the Interior

Subject: Draft responses to letter from Minnesota Delegation Regarding the St. Croix Meadows Greyhound Racing Park

Date: June 27, 1995

Please find attached a draft response letter to members of the Minnesota delegation. I am sending it in double space format on the theory that it will be easier for you to edit and for the typist to read.

Please note that I anticipate that the Department's decision to decline to take the St. Croix dogtrack into trust may be made public later this week. Accordingly, another way to approach the response would be to wait a little longer and then just announce that the issue has been resolved. I also drafted a letter along those lines, and am including it in case you would prefer to take that route.

If there is anything else we can do to be of assistance, please do not hesitate to call (██████████). In any event, I will let you know as soon as the final decision has been announced.

Attachment

EOP 064254



✓ WFO DB → Frank - name by name - Log-in ^{Call Donald 4/145}

• Is the VP going to WFO on March 3?
Call USA Berg 2/4

- memo from SFIO - Steve Wierata 7

- Valid concerns - Exec Office

Immigration 2/7/96

US/Mexico border incidents going down

As most corrupt of States

Naturalization

worksite enforcement / INS vigorous here

Sumat shops - 7 targeted cities being district ^(Ass. 25 Admin)
people to DC to train them

Budget '96 → Funded Initiatives → inserted for remainder

of FY - Sept 30 - Increase & allocations tomorrow ^{\$ 511 mil for INS}

25% increase / 95 increase of \$ 25% - 70% increase within

Admin.

↓

M 33189

EXHIBIT

JO-6

EXECUTIVE OFFICE OF THE PRESIDENT

02-Nov-1995 11:27am

TO: Jennifer M. O'Connor

FROM: Eli Mark
Office of the Chief of Staff

SUBJECT: RE: Voice Mail

No offense taken. I will get the forms.

11:49a
Andy

11:51a
Kevin
Call when you get a chance

11:05a
Joshua Gautbaum
Get call
[REDACTED]

11:10a
Donald Dunn
re: Christmans party names
turned in list of Int Bro and COPE list but need list of people in AFL building,
especially with change in leadership, need list to go in WHODB.
Please call or page him re this.

11:20a
Janaco
re: fax you sent on teamsters



M 33188

Ex 1
- 100-10
- 100-10

July 7, 1995

MEMORANDUM FOR HAROLD ICKES

FROM: JENNIFER O'CONNOR

SUBJECT: BETTER AMERICA FOUNDATION

The Better America Foundation is (was) Senator Dole's effort to create his own version of Speaker Gingrich's GOPAC. It was a non-profit (501(c)(4) status organization created in February, 1993. It raised \$4.6 million -- \$3 million of it in the last quarter of 1994. Because of its 501(c)(4) status, there was no requirement for public disclosure of contributors. Many of Senator Dole's long time staff were on the Better America Foundation staff. The BAF spent over \$1 million on ads featuring Senator Dole last fall. Its staff has said publicly that among the things it did was research issues that would be relevant to a presidential campaign.

In reaction to a flurry of media attention to the BAF, Senator Dole announced that he was closing it down effective June 30, 1995. He said it was doing important work but that it was being politicized by his opponents and the media and that politicization would undercut its work. Dole also announced he would refund the money currently in the bank. After another flurry of press pressure, Dole released the names of the contributors and the amount of their contributions. Ron Perelman was the largest donor, having provided \$250,000 to the BAF. BAF had a total of only 86 donors, 19 of whom gave \$100,000.

*See
F3C* The DNC continues to focus on the outstanding issues related to BAF. For instance, although it raised \$4.6 million, it plans only to refund the \$2.5 million in the bank. The DNC continues to press for all contributions over \$1000 to be refunded because they represent illegal campaign contributions. In addition, the DNC continues to harp on the "quid pro quo" nature of the contributions. The DNC has prepared a list of the contributors and the issues they currently have before the Senate.

While the public relations campaign from the DNC continues, there are no plans at the DNC at the moment to pursue a legal course of action, including complaints to the FEC, etc. If you are interested in more information, I have the contributor's list, the tax filings, newsclips and other materials.



EOP 042168

DEMOCRATIC * NATIONAL * COMMITTEE

David Whiteley, Chairman

CONFIDENTIAL

MEMORANDUM

TO : Harold Ickes
cc. Doug Swenik

FROM : Bobby Watson *BW*

DATE : October 4, 1994

RE : Use of State Party Federal Money; Use of DNC Non-Federal Money

Attached please find information concerning the use of the Indiana or other state party funds, as well as uses of DNC non-federal money. I hope you will find this information useful.

Please contact me if you have any further questions.

BW/wbs



CGFO-1743
REQ. 2/3/97

CHIEF OF STAFF

10/31

OCTOBER 31, 1996

MEMORANDUM FOR R. WARREN MEDDOFF

FROM: HAROLD IKES

SUBJECT: DONATIONS

If possible, it would be greatly appreciated if the following amounts can be wired to the designated banks:

1. Project: National Coalition of Black Voter Participation - 501c3
1629 K St., NW, Suite 801
Washington, DC 20006
Phone: [REDACTED]
Contact: James Ferguson

Amount: \$40,000

Bank Info: Independence Federal Savings Bank
106 E St., NW
Washington, DC 20004
Phone: [REDACTED]
Contact: Ronald Rose

ABA # [REDACTED]
Acct #: [REDACTED]

-
2. Project: Defeat 209 - 501c4
8170 Beverly Blvd., Suite 205
Los Angeles, CA 90048
Phone: [REDACTED]
Contact: Ms. Pat Ewing

Amount: \$250,000

Bank Info: Union Bank of California
700 L St.
Sacramento, CA 95814
Phone: [REDACTED]
Contact: Fred Bernhart

ABA # [REDACTED]
Acct #: [REDACTED]



CGRO-2526
Req. 2/3/97

Memorandum

May 5, 1994

TO: Ann Cahill

FR: Martha Phipps

RE: WHITE HOUSE ACTIVITIES

In order to reach our very aggressive goal of \$40 million this year, it would be very helpful if we could coordinate the following activities between the White House and the Democratic National Committee.

1. Two reserved seats on Air Force I and II trips
Contact: Ricki Seidman/Mike Lufanio
2. Six seats at all White House private dinners
Contact: Ann Stock
3. Six to eight spots at all White House events (i.e. Jazz Fest, Rose Garden ceremonies, official visits)
Contact: Ann Stock
4. Invitations to participate in official delegation trips abroad
Contact: Alexis Herman
5. Better coordination on appointments to Boards & Commissions
6. White House mess privileges
Contact: Patsy Thomason
7. White House residence visits and overnight stays
Contact: Ann Stock
8. Guaranteed Kennedy Center Tickets (at least one month in advance)
Contact: Ann Stock
9. Six radio address spots
Contact: David Levy
10. Photo opportunities with the principles
11. Two places per week at the Presidential CEO lunches
Contact: Alexis Herman



EOP 036287

12. Phone time from the Vice President
Contact: Jack Quinn
13. Ten places per month at White House film showings
Contact: Ann Stock
14. One lunch with Mack McLarty per month
Contact: Mark Middleton
15. One lunch with Ira Magaziner per month
Contact: Marge Tarmey
16. One lunch with the First Lady per month
Contact: Maggie Williams
17. Use of the President's Box at the Warner Theater and at Wolf Trap.
Contact: Ann Stock
18. Ability to reserve time on the White House tennis courts
19. Meeting time with Vice President Gore
Contact: Jack Quinn

*Legal fund
- card*

3 June 1996

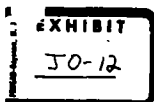
MEMORANDUM TO MIKE CARDOZO

From: Harold Ickes *HI*

Re: Legal fund

On 16 May 1996, Frank Cowan, who is the top assistant to Gerald McEntee, the International President of American Federation of State, County and Municipal Employees, AFL-CIO, told me that McEntee had urged individual members of AFSCME to make contributions to the legal fund and, as a result, approximately \$4,000 has come in to the fund.

I thought you would be interested in knowing.



CGRO-2555
Req. 2/3/97

